

STUDIES IN MEDIEVAL AND REFORMATION TRADITIONS

A Contrite Heart

*Prosecution and Redemption
in the Carolingian Empire*



Abigail Firey

Andrew Colin Gow

SERIES EDITOR

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A Contrite Heart

Studies in Medieval and Reformation Traditions

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VOLUME 145

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in the Carolingian Empire

By
Abigail Firey



BRILL

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2009

On the cover: Susanna (Lothar) crystal, reverse, scene 8: Susanna declared innocent by the judge. © Genevra Kornbluth.

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Portions of this work were published in an essay "Useful Guilt: Canonists and Penance on the Carolingian Frontier" in *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, edited by Martin Brett and Kathleen G. Cushing, Church, Faith and Culture in the Medieval West (Farham, Surrey and Burlington, Vermont: Ashgate, 2008). The duplication is by the kind permission of both publishers.

This book is printed on acid-free paper.

Firey, Abigail.

A contrite heart : prosecution and redemption in the Carolingian empire /

By Abigail Firey.

p. cm. — (Studies in medieval and Reformation traditions, ISSN 1573-4188 ; v. 145)

Includes bibliographical references and index.

ISBN 978-90-04-17815-1 (hardback : alk. paper) 1. Law, Medieval. 2. Penance—History of doctrines. I. Title.

KJ147.F57 2009

340.5'5—dc22

2009025804

ISSN 1573-4188

ISBN 978 90 04 17815 1

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PRINTED IN THE NETHERLANDS

Matri meae,
et in memoriam patris mei:
William James Firey, 1923–2004.
Die Gedanken sind frei!

CONTENTS

List of Illustrations	ix
List of Abbreviations	xi
Acknowledgements	xiii
Introduction	1
Chapter One. The Protection of Privacy: Secrets and Silence ...	9
Whose truth? Rumours and reports	13
Religious dimensions of confession: A pure and true confession of conscience	17
Legal dimensions of confession: Signed, sealed, and delivered	27
Herod's tears	37
Susannah: A true heart	42
Chapter Two. The Public Welfare: Pollution and Purgation	61
Tacit law: The mouse in the soup	63
The discourse of pollution: Pathologies and mutations	71
The politics of pollution and purgation	77
Blood libel and the disembodied soul	82
Purgative justice: Tears extinguish fire	97
Chapter Three. Authority and Piety	111
The prosecution of heresy, c.750: The little crosses	114
Israel in goatskins: Boniface and the limits of ecclesial jurisdiction	117
The prosecution of heresy, c.850: "Lest the baths collapse"	135
Angels and messiahs: The religious cosmos of popular belief	140
Chapter Four. Empire and Education	159
Liutberga's confessions: The court of conscience in the Carolingian Rhineland	161
"Fear is the beginning of wisdom": Penance at the frontiers of empire	181

“They do not cure, but bathe and stroke”: Debates over penitential authority	198
Chapter Five. Contestation, Co-operation, Coercion, and	
Resistance	209
The decisions of the hearts: Confessors and jurisdiction	209
Rod and staff: The exercise of pastoral power	214
“Non insanio sed sanum sapio”: Meritorious penance and resistance	225
Conclusion	230
Appendix A. Penitential Canons Pertaining to Dietary Pollution	235
Bibliography	247
Indices	
Index Locorum	277
Index Personarum	278
Index Rerum	280
Index Scripturarum	292

LIST OF ILLUSTRATIONS

Map.	Map of cited places and select cultural sites of the Carolingian empire	xvi
Figure 1.	Susanna (Lothar) crystal, reverse, scene 2: Elders summon Susanna	53
Figure 2.	Susanna (Lothar) crystal, reverse, scene 3: Elders falsely accuse Susanna	54
Figure 3.	Susanna (Lothar) crystal, reverse, scene 4: Susanna convicted of adultery	54
Figure 4.	Susanna (Lothar) crystal, reverse, scene 8: Susanna declared innocent by the judge	55

LIST OF ABBREVIATIONS

CCCM	Corpus Christianorum, Continuatio Mediaevalis
CCSL	Corpus Christianorum, Series Latina
CSEL	Corpus Scriptorum Ecclesiasticorum Latinorum
MGH	Monumenta Germaniae Historica
	Capit. episc. Capitula episcoporum
	Conc. Concilia
	Epp. Epistolae
	LL Leges
	Script. Scriptores
PL	J.-P. Migne, <i>Patrologiae cursus completus: Series latina</i> (Paris, 1844)

ACKNOWLEDGEMENTS

In his poem “The Unwritten,” W.S. Merwin wrote, “Inside this pencil/ crouch words that have never been written/ never been spoken/ never been taught/ they’re awake in there/ dark in the dark/ hearing us/ but they won’t come out/ not for love not for time not for fire...” The problem indeed is how to extricate the words from the pencil, and this author has relied on a large battalion to assist in their egress. I am profoundly grateful to all its members, many of whom may not even know how their conversations, interest, and smiles contributed to the transfer of words to paper, especially as the passage of time erodes the memories of those moments. I remember them, however, and wish to leave some trace of that history of generosity in this small inscription of thanks which can never be adequate. Many of the initial seeds of thought were sown and nurtured during the two years I enjoyed at the UCLA Humanities Consortium as an Andrew Mellon Post-doctoral Fellow, in the stimulating and gracious company of the faculty and my fellow Fellows, whose task was to study “The Sacred and Profane” under the leadership of Vince Pecora, and where I read and pondered the treatises of Agobard and Amulo. Thereafter the burden of this book’s development was most nobly shouldered by my colleagues in the History Department and Honors Program at the University of Kentucky, who encouraged and pressed me to keep writing and did everything in their power to allow me to do so. Most blessed are the librarians who have assisted me tirelessly and cheerfully at the Pontifical Institute of Mediaeval Studies Library in Toronto and at the William T. Young Library at the University of Kentucky. Special thanks are owed for the exceptional hospitality extended by the University of St. Michael’s College and the folk on the corridor at Clover Hill: especially Jo Godfrey, Mark McGowan, Giulio Silano, Jennifer Harris, Joe Goering, Reid Locklin, Fr. Dan Donovan, and Michael O’Connor, whose company and assistance were invaluable treasures as the pages and footnotes mounted up during several summers. Those accumulated pages received undeservedly attentive, thoughtful, and helpful comments from Barbara Rosenwein and the anonymous, erudite reader for Brill. Despite all its remaining failings, for which I am wholly responsible, this book benefitted greatly from their efforts. Yet it would have remained

in manuscript form only without the efficient and kind attention of Marcella Mulder of Brill and my very favourite copy-editor, Juleen Audrey Eichinger. Through the exceptional graces of Genevra Kornbluth and Richard A. Gilbreath, it has images and a map! Finally, I would like to acknowledge the kind support for my academic ventures given by Charles Donahue (Harvard Law School), John Contreni (Purdue University), and Peter Landau (Stephan Kuttner Institute for Medieval Canon Law/Juristische Fakultät, Ludwig-Maximilians Universität, Munich). It would seem remiss of me, however, to neglect mention of the friendship and inspiration upon which I draw outside the academic world, and so I would like to thank the members of the Music Ministry and Women's Choir at the Newman Center in Lexington, Kentucky, who rejoiced at the work's progress and completion and whose singing always kept knowledge of serenity, joy, hope, and beauty present during the often grisly phases of prose composition, proofreading, and tearing of pages and hair. Gaudeamus igitur!

MAP
CITED PLACES AND SELECT CULTURAL SITES
OF THE CAROLINGIAN EMPIRE





INTRODUCTION

Western jurisprudence has long struggled (and presumably will continue to struggle) to balance the claims of the public and the private good. Strangely, perhaps, of all the principles and precedents brought to bear on the problem, there is little reference to two propositions enunciated by jurists in the 9th century: “Those who are convicted of a public crime are to be judged in the public forum and should perform public penance in a manner prescribed in canon law”; and “If one sins publicly, one should do penance publicly. If one sins secretly, one should do penance secretly.” In these juxtapositions of public justice and an ancient religious ritual lies a clue to a long and complex relationship between law and religion and to the influence of that relationship upon juridical ideas of what is public and what is private. Contingent upon definitions of public and private are a number of important and difficult issues: what rights and protections should be granted to the individual in the face of institutional and judicial power; what measures should be taken to protect a society or its members against dangers; what the punishment of the convicted is supposed to accomplish; how a government uses public education to instill particular ideologies; and whether individual conscience has standing in law. Each of these matters is treated in this book as connected, in one way or another, to interactions between religion and law.

The connections are to what seem a distant past indeed: the empire in 9th-century Europe that took its form under Charlemagne. There are a number of reasons, some more and some less readily apprehended, that Carolingian legal history has not gained either the scholarly or popular recognition accorded the history of Roman law, English Common Law, the Napoleonic Code, or even Classical (i.e., 12th- and 13th-century) Canon Law. It should not be a surprise that the Carolingian Empire left important legacies in jurisprudence. That is, surely, part of what empires do. The legacy is perhaps an awkward one, precisely because it is so patently a Christianised law, possibly the closest the West has come to a theocratic law. Furthermore, uncodified, it is represented in disparate snatches of records, some authentic, some not, some anonymous, some of unknown date, some copied by incompetent scribes, some partially eaten by vermin, and all in Latin, some of it bad.

It is not only the condition of the sources that has limited modern understanding of Carolingian juridical developments. Appreciation of Carolingian legal acumen has been somewhat obscured by an historiographic tradition that preferred to consider the early Middle Ages as “an age without jurists” and which presented as emblematic of Carolingian legal culture “irrational” legal procedures such as the ordeal and oath-swearing. Scholarly advances of the past 20 years make it possible now to study Carolingian jurisprudence and to situate it in a larger cultural context. Rosamond McKitterick’s studies of the manuscripts of both secular and canon law have revealed the extent to which law books and knowledge of written legal traditions pervaded Carolingian society. Janet Nelson has shown that precisely because of interest in written law after the Roman model, judges were enjoined to know the *lex scripta* and to consult written texts so that their judgments would be in keeping with written norms. Her research has also provided evidence that such injunctions were not purely theoretical, for she has identified Carolingians who studied law and owned law books. The quantity and variety of written law available to Carolingians have been revealed in scores of articles by such scholars as Peter Landau, Wilfried Hartmann, Hubert Mordek, Horst Fuhrmann, Rudolf Pokorny, Gerhard Schmitz, Roger Reynolds, Klaus Zechiel-Eckes, and others. In view of the accumulated evidence for both an extensive body of written law and also indications that it was studied and applied, this book has taken the somewhat bold step of referring to “jurists” when discussing the people who compiled, composed, and debated law in the Carolingian realms. The term was chosen in part to maintain the focus on the juridical interests that have left distinctive imprints on texts hitherto unexamined for their legal content. It is also intended to embrace the unknown range of Carolingian personnel who may have been involved in shaping the legal discourse of the era. Many were bishops, some were deacons, some were lay judges, but the anonymity of the sources prevents a clear view of the status and training of all who participated in juridical argument, and it seems best not to presume too much at this point.

Discourse has its own miasmic qualities, especially with regard to time and place, and this work takes a liberal approach to both chronological development and geographical extent. The early medieval arguments traced here seem especially prominent during the 9th century, but they should be considered with some attention to the precedents of the second half of the 8th century and to the continuation of debate

over many of the same issues in the 10th century. The temporal span does not conform neatly to strict definitions of “Carolingian”; similarly, although using the term *empire*, it does not match the often even stricter confines of the years technically permitted the rubric of “Carolingian Empire,” when Carolingian rulers used the title “*imperator*.” Imperial ambitions, however, and sometimes empires, often begin to coalesce before their existence is officially announced. Many of the important military campaigns and conquests that signalled the transformation of Frankish rulership into imperial power took place before the coronation of Charlemagne by the pope, and features of imperial political thought persisted well through and past the intermittent use of the imperial title by Charlemagne’s successors.

The imperial background to the distinctive melding of juridical and religious ideas described in these pages cannot be discounted, for it almost certainly generated both the social disruptions and political opportunities that occasion legal and devotional responses. Scholars have long argued over the nature and degree of Carolingian imperial power. Rather than review the stated intentions of the Carolingian court and the functions of designated officials in the administration of justice as measures of imperial presence, this study examines the tensions over institutional intervention in the lives of those residing in Carolingian territories and proposes that in those tensions we can discern some of the consequences of imperial ambitions. However different the circumstances from those of modern western nations, the legal and religious traditions suffusing the negotiation of the public and the private were the same as those that inform modern western laws: Roman and Christian.

The evolution of a compelling synthesis of religious and juridical ideas is especially noteworthy in view of the somewhat *ad hoc* organisation of political, judicial, and pastoral administration in the Carolingian domains. Although there were claims to empire, there was no state in the modern sense. There was a royal court, and there were intermittent assemblies of the powerful; justice was provided primarily through a multiplicity of small, local courts run by local officials who arrived at their positions by heredity, royal favour, or as clerics. The Church, too, was in a primordial phase of institutional development compared to the vast and efficient bureaucracy and judiciary that characterised its structure from the 12th century onward. The popes of the Carolingian period were, to one degree or another, usually dependent upon imperial support and protection, or if autonomous, not in a position to challenge

effectively most of the transactions of the royal or imperial courts. But Carolingian bishops were pre-eminent figures in the promotion and implementation of imperial government, and their service to the crown, the pope, and their flocks is central to this history.

Those who opine with L.P. Hartley that “the past is a foreign country” might also note that its inhabitants speak a different language. Words and meanings are coded and freighted in culturally and circumstantially particular ways, and recovery of the nuances, even of some of the forceful and clear meanings, is not possible. This book has the premise, however, that although the medieval language and imagery is unfamiliar, it has an important interior logic. By coming to recognise some of the words, phrases, and symbols that are invoked in the medieval texts, it is possible to discern some of the conversations of the past, perhaps never recorded, certainly now lost in time. Readers will find Carolingians referring to the individual as “the heart” or “the soul.” The state is, at best, the *res publica*, a term ambiguous at this point, signalling both the memory of the Roman state and also the philological core of the words: a matter of public concern. There are also many words from religious discourse, encapsulating concepts that shaped jurisprudence: pollution, purgation, capital vices, fear of God, cure of souls, court of conscience, confession, penance.

Recognition of the peculiarities of medieval discourse is not limited to specific terminology. The transformation of Western law in the Carolingian period resulted from the importation of biblical foundations for law, and from a particular mode of reading sacred scriptures. It was not the Ten Commandments of the Mosaic Law, which receive scarcely any attention from medieval jurists, that provided juridical rationales. Rather, a highly technical and peculiarly medieval mode of interpreting Scripture could evoke startlingly salient readings from often overlooked verses, such as “do not move the ancient landmark that your ancestors set up” (Prov. 22:28). Throughout this book the reader will find expositions of the biblical stories and verses that were adduced by Carolingian jurists as the frame for Christian justice.

Medieval law was not created only by the learned who had a specialised literacy in Scripture. This book takes into account the influence of popular beliefs that comprise the tacit, usually unwritten law that is the deep foundation upon which statutory law must rest if it is to stand. Such law is difficult to locate even in modern cultures; its excavation is especially challenging in a time and place for which we have scant knowledge of almost every aspect of life outside the clerical milieu. But

rather than offer a narrative of an enclosed system of legal history, in which jurisprudence is entirely a formal and literary creation, it seems better to try to provide a larger cultural context and to indicate the attitudes, debates, and dynamics outside the texts of the law that seem likely to have played a part in shaping those texts. In this area, too, recent scholarship makes possible deepened understanding of popular piety and pastoral care at the parochial level; the studies of Mayke de Jong, Yitzhak Hen, Rob Meens, Franz Kerff, Ludger Körntgen, and Sarah Hamilton merit special mention.

Since one of the critical areas where law and religion intersect is the meaning of confession (as is argued in the recent book *Troubling Confessions: Speaking Guilt in Law and Literature* by Peter Brooks), this study begins by examining a case in which confession was central to the legal proceedings, but its religious and juridical meaning was perceived differently by various parties involved in the case. The confrontation of religious and juridical claims to truth (most famously and concisely expressed by Pilate, when he asked “what is truth?”) produced an argument that, it is here proposed, led to increased respect for the sanctity of the heart confessing to God, and not necessarily to men. A Christian interest in the truth revealed in the confessional encounter between a soul and God created pressure to allow the accused to set limits to human incursions into knowledge that would be reserved for sacred communication and judgement. Religious confession set a hallowed space around the accused, a zone of privacy for religious experience, and legal procedures had to be adjusted to accommodate that space of secret decisions.

Paradoxically, that early medieval view of the sanctity and privacy of the heart was matched by increasingly aggressive measures for excavating information about the condition of the soul. A major initiative to educate the laity in the scheme of what are now known as “the seven deadly sins” was promoted under the aegis of the imperial court, with lasting effects. The scheme provided both confessors and confessants with a simple but comprehensive device for investigating and declaring the confessant’s moral state. It could be, and was, taught widely, and thus it provided a strong cord of religious discipline that extended from the individual layperson to the bishop. Members of the Carolingian episcopate, made powerful in part by their affiliation with the imperial court and stationed in politically unstable areas of the empire, gained access to the thoughts and impulses of individual members of their Christian flocks just at the time when imperial interest required it.

Complicating any simple paradigm of religious confession as a device for social control, however, was popular interest in redemption. In penitential confession, self-prosecution was a step toward redemption. There were also ways in which the prosecution of others could lead to redemption. Under religious influence, Carolingian law became oriented in part around the welfare of the accused, who not only gained rights of individual protection during prosecution but whose punishment was conceived as therapeutic. The therapeutic conception of justice applied to the larger polity as well, for, again, under religious influence, collective redemption, or at least protection against dangers to collective spiritual welfare, entered the rationales for legal intervention.

Not surprisingly, both religious and legal intervention in the spiritual condition of the empire's subjects raised concerns about the abuse of power. Carolingian clerics and jurists were fully sensitive to the possibilities that the practices of confession and penance could be coerced or that the authority to administer such powerful rituals might be misallocated or misappropriated. Although Carolingians did not use the modern language of human rights, they strove to understand the limits of institutional intervention, even as new possibilities for the creation of a Christian empire excited them. The breadth of the discussions and the debates over the exercise of religious and legal power permit recovery of many of the conflicting interests that still, today, make the road to justice a rough one.

The intent of this book is primarily to listen to those Carolingian discussions and debates. As noted above, their language and form is strange to modern readers. In voices modulated by formalities and a sensibility of modesty so extreme that it often amounts to self-effacement, the texts written by Carolingian authors signal opinions, disagreements, and radical proposals very discreetly. If the prose texts present barriers to analysis, the legal texts do so even more, in their terse and unelaborated prescriptions. Attentive reading, however, shows that their arguments are varied and complex, and to do justice to them, this study follows some of that variety and complexity. It is not driven by a single argument, and readers should not seek to find one. Rather, it is an effort to begin opening doors to issues and questions that have been neglected largely because of the impediments in the evidence. A venture in finding lost keys and oiling sticky hinges, its hope is that the glimpses of the places behind hitherto closed doors will inspire others to go further.

Interest in recovering the perspectives of Carolingians as they participated in religious and legal processes has governed the methods

for investigation and the theoretical orientations for analysis in this work. Carolingianists and scholars in legal studies alike continue to explore the potential for anthropological and sociological methods to clarify the relationships between textual artifacts and social contexts. Many of the topics considered here have been compellingly framed by Michel Foucault, Pierre Bourdieu, and Paul Ricoeur. Although the present enquiry sometimes follows paths marked by anthropologists and postmodern theorists, particularly in its attempts to press through the thickety questions of how language shapes social interactions and underlies the generation and regeneration of social and legal norms, it turns away from full-throated anthropological and linguistic theorising, in part to respect the ineffable inaccessibility of the Carolingian past and in part to respect Carolingian declarations of meaning, which are usually presented in a theological framework. Thus, for example, while it seems reasonable to accept the concept of ritual pollution as a common and credible social phenomenon, the investigation of its impact is here limited to its representation in specific instances of intersecting religious and juridical discourse.

In short, this work considers textual evidence from the Carolingian era for some prevailing patterns of expression that signal the activities of a juridically—even jurisprudentially—minded community, excavates some of that community’s system of readings and metaphors, traces some of the movement of juridical language into a larger cultural discourse as well as some of the flow of religious discourse into legal texts, and indicates the continuation of some of those synthesised traditions, in however attenuated a form, into later ages. Although not a study of origins of particular strains of jurisprudence, this book reveals religious and legal habits that could be, and sometimes have been, reproduced with variations up to the present day. Orientation to the *longue durée* has also determined the work’s emphasis on the cultural rather than the material vehicles for transmitting ideas: the technicalities of codicological analysis are set aside, with the view that they are more suitable for reports in specialised scholarly literature.

Because the present investigations concern diverse, albeit intertwined trends in intellectual and cultural history, it has been possible to loosen somewhat the narrative of their chronological progression and to dwell instead upon the contexts and experiences that affected particular authors and texts. The first chapter opens the enquiry with a mid-9th century crisis, at a point when the entanglement of religious and legal ideas in the empire produced confusion about which matters were, in fact, spiritual, and which were matters for judicial intervention. By

examining the perceptions and arguments of different parties in the case, it is possible to isolate the competing meanings of confession and its relation to secrecy, publicity, silence, and revelation in the religious and legal spheres. In the second chapter, those competing meanings are set in a broader context of synthesised religious and legal discourse regarding the public good, the management of dangers an individual may present to society, and the obligations of a Christian society to provide for the welfare of the convicted. The classic problem in religiously shaped definitions of social dangers and their application in judicial proceedings is the prosecution of heretics, and the third chapter explores such prosecutions, or intended prosecutions, in the Carolingian context. The contrast between a prosecution that took place before Charlemagne came to power and developments subsequent to his accession to the throne helps to identify the magnitude and nature of the changes in religious and legal power attendant upon the development of an empire. The fourth chapter argues that the expansion of ecclesiastical and imperial power entailed a significant educational program in new ways of thinking about sin and salvation that had political as well as religious implications. The fifth chapter considers how, once educated in what this book calls the “penitentialism” of the Carolingian Empire, denizens of the empire viewed the power exercised over them as confessants, and it probes their means of constructing a viable resistance to the weight of institutional power over their souls.

CHAPTER ONE

THE PROTECTION OF PRIVACY: SECRETS AND SILENCE

For moderns, questions about the delineation of the private and the public are often questions about how to balance governmental action and individual liberties. “Public” refers to governmental obligations to attend to the needs of the polity, citizens, subjects, or those under state protections. What is considered private are the areas of personal life to be protected against governmental knowledge, intervention, regulation. As, for example, the Canadian Prime Minister Pierre Elliott Trudeau memorably argued, “the state has no place in the bedrooms of the nation.” Trudeau’s statement reflected a sense of “privacy” as a personal dominion, akin to the sentiment of the aphorism, “an Englishman’s home is his castle.” “Privacy” in such instances is construed as a space free of the prohibitions or permissions that may be in force outside that space. The implication is that private conduct or beliefs may not conform to general norms, and might even be the objects of public disapproval, but that privacy provides a protective veil of liberty. In the Middle Ages, however, privacy was not initially perceived as a place of personal freedom from social or political constraints. Instead it was perceived as a place of truth, where the soul was to be protected from the corruptions of social and political life. Privacy was where the soul stood unveiled before God. The impact of that religious concept on juridical reasoning is the subject of this chapter, and the object of investigation is a divorce.

Divorces, simultaneously intimate and socially problematic, perch somewhere on the legal divide between the private and the public. Divorces momentarily rend the veil granted domestic life, reveal the private lives of the parties, even the recesses of the marital chamber, and open the private space to judicial action, governmental sanctions, and social verdicts. Yet, for the most part, they are private actions, unwelcome, even when tolerated, in the public forum. In the mid-9th century in western Europe, a divorce was also in a liminal zone between religious precepts and Roman law. This position further complicates their place as private or public actions, although in a more technical sense. For scholars of legal history, “private” and “public” have specialised

meanings. The term “private law” refers to the legal actions brought by individual citizens under Roman law, in the absence of prosecutions brought by the state.¹ Christian teachings, however, emphasised the social and contractual obligations binding the community of believers and, it is suggested in this study, provided a platform for the increased use of institutional or corporate legal actions, and “public” prosecutions.² Roman law’s treatment of divorce as a release from contractual obligation and the Christian view of marriage as an indissoluble bond had different premises regarding the private nature of contracts and the communal importance of affective relationships.

For the purposes of investigating the ways in which religion and law interacted to produce distinctive concepts of privacy and social interest, it is good fortune, therefore, to have from Carolingian Francia extensive documentation of a lengthy and contested divorce. Indeed, it is not only good fortune, but remarkable, for few legal cases from the period have left any surviving records to illuminate the legal standards, procedures, strategies, or significant decisions in Carolingian judicial proceedings. It is even more fortunate that arguments over the legitimacy of the judicial process in this case hinged in part on the validity of introducing the defendant’s confession as evidence, for confession is perhaps the most tender gateway for public passage into the private recesses of the individual. An extant Carolingian discussion of this early medieval divorce reveals a range of questions that troubled at least one bishop with expertise in the law. How had the confession been obtained? Are confessions a good source of information? What rules govern, or should govern, the use of confessions in legal proceedings? What rights or expectations does a defendant have with regard to the protection of secrets, to privacy, to refusing to assist the prosecution, and to the shelter of religious immunities for the needs of the soul?

That bishop was Hincmar of Rheims. His reflections on the divorce are especially illuminating not only because he was one of the most accomplished jurists of the era, whose opinions continued to be cited even in Gratian’s *Decretum*, but also because his writings show a con-

¹ See R.C. van Caenegem, *An Historical Introduction to Private Law*, trans. D.E.L. Johnston (Cambridge: Cambridge University Press, 1992); and Peter Stein, *Legal Institutions: The Development of Dispute Settlement* (London: Butterworths, 1984), 107–29, for concise and insightful surveys.

² See Chapter Two for discussion of the ways in which the Christianisation of law expanded opportunities for public prosecutions.

sistent interest in bringing Christian reasoning to the fore of every argument. His was a jurisprudence that recognised the distinctions between Roman and canon law, and the different prerogatives of secular and ecclesiastical authorities. Yet Hincmar also sought to root each of his juridical opinions in a rationale derived from close (sometimes very close) reading of the Bible. As both bishop and jurist, with the two roles fully integrated, he is an excellent representative of the highly educated, politically engaged, pastoral lawyers who dominated the Carolingian episcopate and, in their legal and pastoral activities, helped to determine some of the courses of Western law.

The divorce was undeniably complex, and it is precisely because of the number of issues it raised that it is a useful mirror of the larger uncertainties besetting medieval jurists in the mid-9th century. Many of the complications were the consequence of overlapping and multiple religious and legal discourses that resulted from a conscious campaign to Christianise law that had been mounted under Charlemagne some decades earlier. On matters where Roman law had a set of meanings and conditions, the infusion of Christian meanings and conditions allowed for confusion. The complexities that had become especially acute in the mid-9th century lay in the difficulties in distinguishing between a religious process of confession and penance and a legal process of confession and punishment.

The religious process of confession and penance further entangles the meanings of “private and public” because of the technical terminology used to specify whether the performance of penitential rituals (the formal confession, the mortifications undertaken for atonement, and the conclusion of the process) was private or public. The distinction in performative forms has traditionally been described by modern scholars as a sequential evolution, in which “private” (known to Carolingians as “secret”) confession and penance supplanted public rituals sometime in the especially obscure period of the 6th and 7th centuries.³ References

³ Recent scholarship questions or rejects this narrative in useful ways, especially since the publication of Mary Mansfield, *The Humiliation of Sinners: Public Penance in Thirteenth-Century France* (Ithaca, NY: Cornell University Press, 1995), which has an excellent analysis of the historiographical production of the dichotomy between “private” and “public” penance and the chronology devised to accommodate the perception of dichotomy (pp. 5–9). Also engaging the historiographic construction of the history of penance, and with particular attention to the early Middle Ages, is Sarah Hamilton, *The Practice of Penance, 900–1050*, Royal Historical Society Studies in History (Woodbridge, Suffolk, and Rochester, NY: Royal Historical Society: Boydell Press, 2001), 2–20. Recent

in Carolingian sources to public confession and public penance have been taken to indicate that there was a largely unsuccessful effort in the 9th century to revive obsolete practices and that private confession to a priest who assigned secret penance remained the norm. To judge from the Carolingian evidence, however, the rituals for religious confession and penance were far from settled, and the variety of possible practices invited debate.⁴ In the case discussed here, a central problem was whether the confession was a public or private matter, and why.

In sum, there were several levels of tension between “public” and “private” in this divorce. The legal boundary between the private action of a civil suit and the prosecution of a case of public import was shifting as marriage gained religious significance. Within the religious sphere, marriage raised questions about the balance of social benefit and individual redemption, and the relative weight of personal and social interests was intricately related to the question of whether the performance of religious confession should be public or private. Confession had both spiritual and legal meaning, so also hanging in the balance was whether the religious and legal meanings of confession could be integrated, given their differing demands for transparency. Legal actions shrouded in secrecy become suspect; religious actions are shaped to respect the mysterious nature of the holy. From that tension between legal and religious demands, this chapter proposes, came new understandings of a conceptual space of asylum to be accorded those accused in law, a space of protection, defence, contemplation, and possibly redemption—a space of privacy.⁵

work exploring theories and practices of penance that prescinds from the dichotomy is in *A New History of Penance*, ed. Abigail Firey, Brill Companions to the Christian Tradition, 14 (Leiden and Boston: Brill Academic Publishers, 2008).

⁴ Vide *infra*, Chapters Four and Five.

⁵ It is surely no accident that the concept of asylum became the subject of debate in Carolingian circles. Two of the most important bishops of Charlemagne’s entourage, Theodulf and Alcuin, became embroiled in a strident lawsuit centred on the right to asylum. See Rob Meens, “Sanctuary, Penance, and Dispute Settlement Under Charlemagne: The Conflict Between Alcuin and Theodulf of Orléans Over a Sinful Cleric,” *Speculum* 82 (2007): 277–300. An excellent study of Carolingian modification of the traditions of Roman law regarding asylum in the wake of this incident, and the accommodation of Alcuin’s arguments regarding the importance of providing criminals the opportunity for penitential confession, is in Hélène Noizet, “Alcuin contre Théodulphe: Un conflit producteur de normes,” *Annales de Bretagne et des pays de l’Ouest* 111 (2004) [special issue: “Alcuin, de York à Tours: Écriture, pouvoir et réseaux dans l’Europe du haut Moyen Âge”]: 113–29. For other considerations of the relationship between penance and asylum, see Trisha Olson, “Sanctuary and Penitential Rebirth in the Central Middle

Whose truth? Rumours and reports

As divorces go, that of Lothar II and his queen Theutberga was a salacious one, and it is easy to understand why Hincmar, bishop of Rheims, felt constrained to point out to those enquiring into the matter that curiosity is a terrible vice.⁶ Lothar, Charlemagne's great-grandson and king (A.D. 855–69) of the middle portion of the partitioned empire, announced in 858 that he wished to divorce Theutberga. Theutberga had borne him no children, and he had a mistress who had, and whom he wished to marry. To provide grounds for the divorce, some of the king's supporters alleged that, prior to her marriage, Theutberga had committed incest with her brother. Theutberga's innocence was tested by ordeal, a means of judgement suited to cases in which there were no witnesses, and also, scholars hold, with effects ranging from attaining consensus in especially divisive cases to intimidating a litigant.⁷ Theutberga's ordeal,

Ages," in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*, ed. Anthony Musson (Aldershot: Ashgate, 2005), 38–52. For discussion of the access to monastic precincts and the right of asylum prior to the Carolingian period, see Barbara Rosenwein, "Inaccessible Cloisters: Gregory of Tours and Episcopal Exemption," in *The World of Gregory of Tours*, ed. Kathleen Mitchell and Ian Wood (Leiden, Boston, and Cologne: Brill Academic Publishers, 2002), 181–97.

⁶ "...curiositate, quae grave est, ut dicit Gregorius, vitium..." Hincmar of Rheims, *De divortio Lotharii regis et Theutberga reginae*, ed. Letha Böhringer, *Monumenta Germaniae Historica* [hereafter MGH], *Concilia* [hereafter Conc.], IV, Supplementum I (Hanover: Hahnsche Buchhandlung, 1992), 117–18. On the divorce, see Stuart Airlie, "Private Bodies and the Body Politic in the Divorce Case of Lothar II," *Past and Present* 161 (1998): 3–38; Raymund Kottje, "Kirchliches Recht und päpstlicher Autoritätsanspruch. Zu den Auseinandersetzungen über die Ehe Lothars II," in *Aus Kirche und Reich. Festschrift F. Kempf* (Sigmaringen: J. Thorbecke, 1983), 97–103; Jean Devisse, *Hincmar, Archevêque de Reims 845–882*, 3 vols. (Geneva: Librairie Droz, 1975–76), 1:383–429; J. Prinz, "Ein unbekanntes Aktenstück zum Ehestreit König Lothars II," *Deutsches Archiv für Erforschung des Mittelalters* 21 (1965): 249–63; and C. Brühl, "Hincmariana," *Deutsches Archiv für Erforschung des Mittelalters* 20 (1964): 48–77. I have not been able to consult Karl Josef Heidecker, *Kerk, Huwelijk en Politieke Macht de Zaak Lotharius II (855–869)* (Amsterdam: [S.n.], 1997); of which there is a brief synopsis and review by Rob Meens, "Ecclesial, Matrimonial and Political Power: The Lotharius II Affair, A.D. 855–869," *Revue d'histoire ecclésiastique* 93 (1998): 504–06. Still useful for its legal perspective is Max Sdralek, *Hinkmars von Rheims kanonistisches Gutachten über die Ehescheidung des Königs Lothar II.* (Freiburg i. Br., 1881). For a thoughtful analysis of the social dynamics, see Suzanne Fonay Wemple, *Women in Frankish Society: Marriage and the Cloister, 500 to 900*, Middle Ages (Philadelphia: University of Pennsylvania Press, 1981), 84–91.

⁷ Peter Brown, "Society and the Supernatural: A Medieval Change," in *Society and the Holy in Late Antiquity* (London, 1982), 306–17. Brown's interpretation of the ordeal as an "instrument of consensus" has been qualified in an important article by Stephen White, "Proposing the Ordeal and Avoiding It: Strategy and Power in Western French

conducted vicariously, indicated her innocence when her agent emerged unscathed. Subsequent developments, however, rendered the judgement of the ordeal problematic. Imprisoned by Lothar, Theutberga made a secret confession to the king's chaplain, the archbishop of Cologne, in which she begged to be separated from Lothar.⁸ The archbishop revealed the content of the confession to bishops convened at Aachen in 860, but Theutberga herself refused initially to make a public confession. When at last she allegedly did, in an assembly including other bishops and lay nobles, the confession contained the details that the incestuous act was one of sodomy.⁹ Reports added that she had conceived a child by it (a claim which puzzled contemporaries), which she then aborted. The case had become so complex by this point that a group of bishops sent to the archbishop of Rheims, Hincmar, 27 questions on which they sought his legal and spiritual expertise. The questions ranged from the problem of whether perhaps it might be by witchcraft that Lothar had such distaste for his wife and whether such a spell might be removed, to the legitimacy of dissolving marriage, to the question of whether an ordeal might yield a fraudulent result.

Hincmar's responses show his interest to have been largely not in the facts of the case, but in the legal and moral processes entangling those who were entrusted to bring the crisis to a satisfactory conclusion. And his particular concern was a problem in legal epistemology: in a web of testimonies—confessional, accusatory, testificatory—what are the means of discerning the truth, and how is truth hidden and revealed? For Hincmar, the problem of secrecy and what is known was a profound religious question, relating to both the Christian concept of human integrity—body and soul—and also to the celestial mysteries

Litigation, 1050–1110,” in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas N. Bisson (Philadelphia: University of Pennsylvania Press, 1995), 89–123, repr. in [Stephen D. White] *Feuding and Peace-making in Eleventh-Century France* (Aldershot: Ashgate, 2005), where it is argued that the ordeal could also be “a strategy of confrontation, a means of issuing a political threat... meant to break a political and legal impasse in the case by intimidating the opposing party” (p. 105). White is careful to insist on the variety of circumstances and functions of the ordeal. In the instance of the divorce, it would seem that the possible aims of attaining consensus and attempting intimidation need not be mutually exclusive.

⁸ *Annales Bertiniani*, ed. Georg Waitz, MGH, *Scriptores* [hereafter *Script.*] I (Hanover: Hahnsche Buchhandlung, 1883), 450 (a.858).

⁹ The problem of how to translate “inter femora, sicut masculi in masculos turpitudinem operari” is noted by Meens, “Matrimonial Power,” 505.

obscure to human observers.¹⁰ Yet Hincmar was no mere theologian, but a pragmatic jurist with considerable experience in litigation and one of the largest law libraries in the Carolingian realms at his disposal.¹¹ His task in the treatise *De divortio Lotharii regis et Theutbergae reginae* was to cast the larger, abstract issues pertaining to the divine order as applicable juridical opinions. His goal was to identify the means by which truth—not the truths that might be useful to Lothar but, rather, the truths that would be salutary for Theutberga and the Christian subjects of Lothar’s kingdom—could be protected.

Part of the value of Hincmar’s treatise for the historian is that it not only contains his responses to the questions posed to him but also embeds, apparently *verbatim*, three documents that were supplied to him as records of the proceedings at the royal court, in order that he might properly assess the veracity of the claims made by the royal parties. These three accounts all detail Theutberga’s confession, but they show significant discrepancies in their presentation of the procedure by which the confession was made and received. These inconsistencies have led scholars to presume that there were two episodes, or two “councils,” at Aachen in 860, one in which Theutberga refused to confess and a second one at which she confessed publicly and with considerable detail.¹² It is not clear why there would be a succession

¹⁰ On this topic, see Karl Morrison, “‘Unum Ex Multis’: Hincmar of Rheims’ Medical and Aesthetic Rationales for Unification,” in *Holiness and Politics in Early Medieval Thought*, repr. from *Settimane di Studio* 27.2 (London: Variorum Reprints, 1981), 583–712.

¹¹ On Hincmar’s legal resources, see J. Devisse, *Hincmar et la Loi* (Dakar: Publications de la section d’Histoire, Université de Dakar, Faculté des Lettres Humaines, 1962).

¹² The supposition that there were two synods at Aachen was reified in the edition of Alfred Boretius and Victor Krause, eds., MGH, *Capitularia Regum Francorum*, II (Hanover: Hahnsche Buchhandlung, 1883–97), 463–68, followed in turn by Wilfried Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien* (Paderborn: F. Schöningh, 1989), 275–78. Much of the dating of events and of Hincmar’s interventions was established by Heinrich Schrörs, *Hinkmar, Erzbischof von Reims: Sein Leben und seine Schriften* (Freiburg: Herder, 1884); and later, with variations, by Devisse, *Hincmar, Archevêque de Reims 845–882*, 1:383–91. The intricate arguments for construction of a feasible chronology are admirably reviewed by Böhringer, *De divortio*, 20–28. The only documents from which to build such arguments are an undated letter (included in *De divortio*, 131–32) from Hincmar to Bishop Adventius, a fragment of a second such letter (*De divortio*, 132), and the accounts embedded in the complex manuscript of the *De divortio*; on the composition of the manuscript, see Böhringer, 35–65. The noted dates in the *Libellus Septem Capitulorum* (“the royal account,” indictione viii, v idus ianuarii) and the *Tomus Prolixior* (“the expanded version” [hereafter TP], indictione viii, mediante Februario mense) suggest the possibility that scribal error subsequently has been taken as evidence for two events.

of episodes, each eliciting more elaborate confessions, in the presence of ever larger groups, when each account presents the same question and resolution.¹³ Hincmar did not indicate that he was treating separate events.¹⁴ The documents seem rather to contribute evidence that the conditions of Theutberga's confession were contested.¹⁵ Each was designed to demonstrate the legal and ritual conditions necessary to validate (or invalidate) the process by which the confession was made. Whether originating in different episodes or not, the three documents show different perspectives on the ambiguous nature of Theutberga's confession. Read as a set of deliberately constructed and differing versions of events, the documents and Hincmar's use of them permit some recovery of the debates over the validity of the queen's confession.

The first account was composed to illustrate the propriety of the bishops' enquiry and participation in the case. Called by Hincmar "the

¹³ Summarising the work of T. Gross and R. Schieffer, Timothy Reuter describes the assemblies held twice a year at the Carolingian ruler's court as comprising a preparatory assembly attended by "the most important men of the kingdom and the ruler's chief advisors" and a general assembly, in Reuter, "Assembly Politics in Western Europe from the Eighth Century to the Twelfth," in *The Medieval World*, ed. Peter Linehan and Janet L. Nelson (London and New York: Routledge, 2001), 435. Following Gerd Althoff, Reuter also emphasises that assemblies were convened for ritual resolution of conflicts that had already been settled through private negotiations ("Assembly Politics," 439–40). Vide infra, note 45, for an instance of such procedure specified in the third document. The private conclave there described may or may not refer to the meeting of the seemingly few bishops represented in the first document. The degree of unresolved conflict, however, suggests either an inability to pursue an orderly process or that there was no sequence of recognised formal procedures.

¹⁴ The *Annales Bertiniani*, which were likely revised by Hincmar between 861 and 866, report for the year 860 only that "Lothar hated his queen Theutberga, with irreconcilable loathing, and after wearing her down with many acts of hostility, he finally forced her to confess before bishops that she had had sodomite intercourse with her brother Hubert. For this crime, she was immediately condemned to penance and shut away in a convent." *The Annals of St.-Bertin*, trans. Janet L. Nelson, Manchester Medieval Sources Series, vol. 1 Ninth-century Histories (Manchester: Manchester University Press, 1991), 92. For discussion of Hincmar's acquisition and continuation of the Ann. Bert., cf. *Annals of St.-Bertin*, 9–15.

¹⁵ Recent scholarship proposes some Carolingian proclivity for dissemination of revised or varying written accounts of politically fraught penitential or legal proceedings: see Courtney Booker, "The Public Penance of Louis the Pious: A New Edition of the *Episcoporum de poenitentia, quam Hludowicus imperator professus est, relatio Compendiensis* (833)," *Viator* 39 (2008): 1–20 (p. 6); and, on the multiple representations of a later stage of Lothar's efforts to divorce Theutberga, Philippe Buc, "Text and Ritual in Ninth-Century Political Culture: Rome, 864," in *Medieval Concepts of the Past: Ritual, Memory, Historiography*, ed. Gerd Althoff, Johannes Fried, and Patrick J. Geary (Cambridge: Cambridge University Press, 2002), 123–38 (pp. 128–36).

brief in eight chapters" (*libellus octo capitulorum*), the document here called "the bishops' brief" is a concise and selective text in which each episode is reduced to a description of what were perceived to be the essential evidentiary elements, with respect to both the actions and words of the participants. It describes how Theutberga's confession became known to others besides her confessor. The second document, referred to here as "the royal account" (in Hincmar's treatise, "the brief in seven chapters") also describes how the content of the confession was known, but it is more interested in the motives and circumstances of those in the royal ménage who obtained it. Although dutifully reproducing it, Hincmar dismisses it as unhelpful. The third account is "the expanded version" (or, as Hincmar called it, "the more prolix tome"—*tomus prolixior*); it is the account usually cited by modern scholars because it reports the lurid content of the confession, and it is the account which represents the confession as delivered in a public assembly. By considering each report in turn, it is possible to discern some of the interests and discourses governing perceptions of the case from the vantage-points of different parties.

*Religious dimensions of confession:
A pure and true confession of conscience*

As Theutberga's advocate, Hincmar opened his critique of the flaws in the divorce proceedings by pointing to the breaches of protocol indicated by "the bishops' brief," an account almost certainly written by one or more of the bishops at the royal court who at least initially supported the king's effort to obtain a divorce. "The bishops' brief" seems to have been intended to show that the bishops who heard Theutberga's confession had properly performed their pastoral duties. It also attempted to present a plausible sequence of exchanges between the confessor and confessant that would account for the transformation of a secret, religious confession into a more widely known one used against Theutberga in legal proceedings. Because a religious confession requires piety and cooperation on the part of the penitent, the brief depicts Theutberga as an active and willing participant, and the comments ascribed to her are relayed fairly fully. The question is whether, even if perceived and portrayed by the bishops as a cooperating confessant, Theutberga was in fact attempting to make use of the ambiguities in the situation as part of a somewhat desperate strategy for legal defense.

The brief begins by recounting two ostensibly parallel and pastoral interviews conducted by the bishops, one with the king and one with the queen; the implication is that the bishops were even-handed in their ministry at the court. After explaining that they met with Lothar so that they could discern, “with the ear of heart and body” the nature of the case and arrive at a unanimous opinion regarding its end (*exitum et finitum*), the bishops devote a short chapter to the interview with Lothar. In some ways, it appears to be a penitential scene. It is stated that the colloquy was secret, that the king was humble and in a state of purity, and that he revealed his special needs, asking for counsel and remedy (*consilium et remedium*).¹⁶ The bishops also establish that the king wept and sighed, the critical signs that validated a penitential confession, and that they, moved to compassion by the Lord, gave “a medicinal remedy,” the standard expression for penance. The text does not specify why Lothar might confess and receive penance, and this omission renders the text ambiguous: perhaps this is simply a doleful scene of counsel and comfort. That said, the language is closely related to that of the subsequent chapter describing the queen’s confession. What is lacking in the chapter referring to Lothar, then, is any careless revelation of the content or even the certainty of a confession: the seal of confessional secrecy is strictly observed, even as the bishops reveal the fulfillment of their pastoral obligations.

Thereafter, the subject of “the bishops’ brief” is the queen. After receiving the medicinal remedy, Lothar sadly tells the similarly grieving bishops that although he wished to have Theutberga as his wife, she requested that, being unworthy of the marital bed, she be freed from the conjugal bonds, and be held worthy (*mereretur*) to take the veil and serve Christ.¹⁷ (Scholars have not taken this assertion as a serious reflection of Theutberga’s sentiments.¹⁸) Having presented the queen’s

¹⁶ “Gloriosus rex Hlotharius familiare et secretum colloquium nobiscum habens humiliter devota puritate suas speciales ac proprias necessitates consilium et remedium quaerendo exposuit.” *De divortio*, 115. All translations of the Latin are by the author, unless otherwise noted.

¹⁷ *De divortio*, 115.

¹⁸ Theutberga’s disenchantment with the marriage is evident in A.D. 867, when she appealed to Pope Nicolas for release from the marriage and indicated her abdication *sponte et libenter* of royal status: see François Bougard, “En marge du divorce de Lothaire II: Boson de Vienne, le cocu qui fut fait roi?” *Francia* 27.1 (2000): 33–51 (p. 45). The grounds for the divorce constitute the problem most studied by both medieval and modern canonists; the issue is complicated by the question of how secular law and canon law might apply. Theutberga could possibly claim to be governed by Burgundian

plea through the testimony of her husband, in a dramatic shift of scene, the brief interrupts the conversation with Lothar by the breathless intrusion of a messenger from the queen, calling the bishops to go to her without delay. Like Lothar, once the bishops have arrived, Theutberga beseeches them, “on account of God and on account of your office” to give her “true counsel” (*verum consilium*).

The brief’s reference to their ministerial status suggests that the bishops are in the queen’s presence to play a sacral role, and in the next chapter, one of the longest of the eight, the bishops are reported to have stipulated that their ability to give counsel is contingent upon the queen making a pure and true confession of her conscience. Indeed, they apparently belaboured the point:

Would that the Lord would give us counsel,” we said, “which we might give to you truthfully and wholesomely. Just tell us in a pure and truthful confession of your conscience what it is, for which you need counsel with such clear adjuration, because we are unable otherwise to provide what you ask, unless we know the truth of the matter. We nevertheless warn against this, and diligently prohibit you by our authority and that of God that neither invited to other honors by anyone’s persuasion or deception, nor by fear of any punishment or of death should you concoct falsely a crime for yourself and, heaven forbid, lead us into error, but, as we warned above [sic], you should set forth the truth of the matter, just as it is, no more, no less, and with the Lord giving us counsel and aid we shall endeavour to serve you, so that you may not be cheated in any way of any part of your just due.¹⁹

law, while Lothar’s legal personality would have been that of a Salic Frank. As wife and queen, Theutberga would have come under the provisions of Lothar’s law, but the relative force of laws with pagan (Salic) or Arian (Burgundian) associations and of Christian or scriptural legislation also had to be weighed. On these questions, see Sdrálek, *Hinkmars kanonistisches Gutachten*, 103–15.

¹⁹ “Cui nos e vestigio respondentes, ‘Utinam,’ aimus, ‘dominus nobis consilium, quod tibi veraciter et salubriter demus, administret, tantum tu dic nobis pura et veraci tuae conscientiae confessione: Quid est, unde consilium tam expressa obtestatione requiris, quia aliter tibi, quod petis, praestare non possumus, nisi rei veritatem agnoscamus? Hoc tamen praemonemus tibi diligenter prohibemus dei et nostra auctoritate, ut nec alicuius suasionem, immo deceptionem, ad alios honores invitata nec timore cuiuslibet poene vel mortis aliquod tibi crimen falso confingas et nos, quod absit, in errorem inducas, sed, sicut superius monuimus, rei veritatem, sicuti est nec plus nec minus, pandas; nosque domino donante consilium et auxilium tibi praestare decertabimus, ut nequaquam a tua iustitia in aliquo defrauderis.” The spatial designation “superius,” “above,” is a breach in the fiction of speech in a written narrative, and shows that the report was not a strict transcript of the spoken words, but at least to some degree a written composition. *De divortio*, 115.

The language of the text shows how entangled penitential and legal discourse had become. The bishops evoked a central tenet of penitential theology: only God can know the secrets of the heart, and the human confessor is dependent upon the true articulation effected by the confessant's conscience for his knowledge of the sinner's condition. Compounding the uncertainties of the confession are the possibilities of corruption or coercion, as with any other testimony. Their choice of language when they sought an affirmation that Theutberga's revelations would be given freely and truthfully was juridical: they rehearsed the standard set of perverting conditions detailed in legal discussions of false testimony: bribery, fraud, intimidation.²⁰

It did not escape Hincmar's attention that such condescending admonitions were not, reportedly, delivered to Lothar when he sought *consilium*, and he selected this passage as evidence that, far from demonstrating that the queen was fully and properly advised of the necessary conditions for a valid confession, the brief seems to indicate that something was amiss. Why the warnings, he asks, if it were not known beforehand what Theutberga would say? And if it were known by many prior to her confession what she would say, then why was her statement received as if in a secret confession?²¹ With these questions, Hincmar delicately indicates malfeasance: either the confession was tainted by interference or coercion, or the seal of her prior confession (the existence of which is clarified in the next chapter of the brief) had been violated, or a matter that should have been adjudicated publicly

²⁰ The bishops' warning echoes the "sine fraude et malo ingenio" formula of oaths sworn in the Carolingian period, the wording of which drew from Roman and vulgar law: cf. Matthias Becher, *Eid und Herrschaft: Untersuchungen zum Herrscherethos Karls des Grossen*, Vorträge und Forschungen. (Sigmaringen: J. Thorbecke, 1993), 128–39; Heinrich Brunner, "Zeugen- und Inquisitionsbeweis im deutschen Gerichtsverfahren Karolingischer Zeit," in *Forschungen zur Geschichte des deutschen und französischen Rechts* [repr.], vol. 51 (1865 [1866]): 343–505, Sitzungsberichte der philosophisch-historischen Klasse der Kaiserlichen Akademie der Wissenschaften (Stuttgart, 1866), 156, 235 ("per nullius hominis timorem neque blandimentum"). See also H. Hattenhauer, "Der gefälschte Eid," in *Fälschungen im Mittelalter. Internationaler Kongreß der Monumenta Germaniae Historica München, 16.–19. September 1986. 2: Gefälschte Rechtstexte. Der bestrafte Fälscher*, vol. 2, MGH Schriften 33.2 (1988), 661–89; and R. Schmidt-Wiegand, "Eid und Gelöbniß. Formel und Formular im mittelalterlichen Recht," in *Recht und Schrift im Mittelalter*, ed. P. Classen (1977), 55–90.

²¹ "...mirum est, si ante non fuit cognitum, quod ab ea erat dicendum, cur talia eidem feminae ante confessionem fuere praemissa; et si a pluribus, quae dicenda erant, ante fuerunt percognita, cur quasi sub secreta confessione, quae dicta sunt, profitentur esse recepta?" *De divortio*, 116.

was being treated with improper secrecy. In view of the gossip swirling around the royal couple, Hincmar's stance might seem disingenuous, but he seems to maintain that the bishops would have acted thus only if the episode were staged or falsely reported when he courteously but wickedly comments that perhaps the bishops were divinely privileged by foreknowledge as were the prophets of the Old Testament.²²

The brief's interest in protecting the bishops against charges of malfeasance seems clear enough: its narrative contains careful and explicit demonstrations that as religious ministers they received a confession that wholly conformed to the canonical requirements for legitimacy. The confession was not coerced, but delivered at the will of the confessant, a point made repeatedly: Theutberga summoned the bishops, sought their ministry "with adjuration," and told her confessor to tell the others what she had told him. It was delivered *viva voce*, and albeit with some sleight, the confessant and confessor were face to face. The most suspect aspect, the publication of the confession, was encased in the conditions of voluntary, oral, personal delivery.

Even with the brief's emphasis on the cleanness of the bishops' hands, however, it is obvious that this was no routine confession of sin arising from religious desire. The legalistic report is itself evidence that the religious ritual had been affected by juridical analysis; the connection to legal process was part of a larger context of political appropriation and exploitation of religious power. The bishops were implicated in the diversion of religious ministry to place Theutberga in legal jeopardy, and Hincmar clearly was not persuaded that Theutberga's confession, as described in the brief, was either normal or valid as a religious event.

Both complicating and enhancing the value of the bishops' brief as a source illuminating Carolingian views of confession is its record of Theutberga's comments during the interview. In their circumspection and legal utility, her responses to the bishops' admonitions suggest that they may have been "transcribed" in the brief with a fair degree of accuracy, rather than concocted. Possibly the same legalism that shaped the document's defense of the bishops produced a reasonably conscientious record except when it was tailored to display specific evidence of the bishops' propriety. Whether the transcript is a conservation or a creation, the brief presents Theutberga's exchanges with the bishops as equally juridical, although, according to the brief, she, too, used the

²² *De divortio*, 116.

rhetoric of piety to convey her political and legal intentions. For her, the situation was riddled with ambiguities. Bishops served both as judges and pastors: they administered both legal verdicts in criminal cases and salvific measures to the souls in their care, and in their view, crime and sin had a vital relation. Pressed to confess by them, Theutberga faced either a penitential opportunity to unburden her conscience and be healed (should she so desire) or a legal prosecution with potentially grim consequences.

In a startling manoeuvre, it seems that Theutberga attempted to manipulate the ambiguities in the juridical and penitential processes in order to gain both legal and moral advantage. First, in the speech the brief presents as her reply to the bishops' exhortation to tell the truth, she assured them that, as God was her witness, as her conscience bore witness, as even her own confessor was witness, she would never say anything about herself (thus apparently limiting the subject and possibly any accusation of her brother) that was not the truth.²³ The phrasing supplied by the brief appears both formal and formulaic ("with a witness either on my right or on my left") and would suggest some reference to traditional, secular oath-giving recognised as binding.²⁴ The terms of her formal statement are both vague and careful in the brief's account: Theutberga reiterated that her words applied only to herself and also, in the same words as were recorded in the chapter detailing Lothar's testimony about the marriage, she stated that she knew that she was unworthy to remain in the marital union.²⁵

It is then that she sprang her surprise: she called upon the bishop to whom she had confessed, who was present, to be a witness to her claim. Lest there be any doubt as to what she asked him to support, she specified again, "that I am not worthy": *non sum digna*.²⁶ To emphasise and

²³ "‘Nequaquam,’ ait illa, ‘teste deo et propria conscientia, teste etiam meo confessore aut a dextris aut a sinistris aliter dicam vel de me fatebor, nisi quemadmodum in veritate est.’" *De divortio*, 115.

²⁴ I have not been able to locate the phrase in other sources of the period. On Carolingian oaths and their language, see Becher, *Eid und Herrschaft*, cit. supra, note 20.

²⁵ "‘Recognosco,’ inquit, ‘et de me ipsa scio, quia non sum digna in coniugali copula permanere.’" *De divortio*, 115.

²⁶ This phrase (Matt. 8:8), now known to every Roman Catholic facing the Eucharist, seems not to have been regularly used in communion prayers until the 10th century. Without liturgical repetition, it is difficult to know what resonance it might have had among the educated Carolingian populace, although one text attributed to Eligius of Noyons has a clear connection between a penitential attitude and approach to the Eucharist: "Quocirca cum timore et compunctione mentis, omnique reverentia, debe-

clarify precisely what Theutberga had done, the brief continues, "She then, turning to that bishop, imploring, said, "Bishop, I ask that you make these, your brother bishops, understand, as you know best how to, that it is thus, just as I have presented testimony about myself."²⁷

By calling on her confessor to serve as witness, Theutberga disrupted the normal course of both penitential and legal systems. By combining both absolute precision about the terms and limits of her claim, and notable lack of specificity in her invitation to Gunthar to testify, she set up a nasty problem for the bishops. She had reverted to the protocols of secular law, in which parties in a lawsuit called upon prestigious witnesses to support them.²⁸ The bishops would be in the position of discerning "with the ear of heart and body" the truth as stated by one of their own colleagues. Gunthar was, as her confessor, under an obligation to serve as her advocate before God; he was implicated by having received her confession as true. Were he to reveal the content of the confession, he would violate its seal and his office. But it was the person who had confessed who was inviting him to do so.²⁹ A woman, with

mus accedere ad altare et ad mensam corporis et sanguinis Domini, et dicere humiliter cum centurione: Domine, non sum dignus ut intres sub tectum meum." "Sermo 15," in J.-P. Migne, *Patrologiae cursus completus: Series latina* (Paris, 1844) [hereafter PL] 87, col. 647 (cf. Eligius Dekkers, *Clavis patrum latinorum qua in Corpus Christianorum edendum optimas quasque scriptorum recensiones a Tertulliano ad Bedam* [Steenbrugis: In Abbatia Sancti Petri, 1995], no. 2096). I am deeply grateful to Prof. Richard Gyug of Fordham University for conveying this information to me in a personal note.

²⁷ "Et inde vobis testem adhibeo praesentem episcopum Guntharium, cui ego confessa fui; ipse enim novit, quia non sum digna." Quae etiam mox se vertens ad ipsum episcopum implorando aiebat: 'Rogo,' inquit, 'episcopo, ut istos tuos confratres, sicut melius scis, intellegere facias, quia ita est, sicuti de me testimonium perhibui.'" *De divortio*, 115.

²⁸ For an important argument that oath-swearing was a significant component in Roman law, especially Roman vulgar law, see Ian Wood, "Disputes in Late Fifth- and Sixth- Century Gaul: Some Problems," in *The Settlement of Disputes in Early Medieval Europe*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1986), 7–22. Wood speculates that "The major difference between this [oath-taking in classical Roman law] and oath-taking in the sub-Roman period is the apparent absence of oath-helpers, whose later role may derive from legal developments in late Roman provincial society rather than from Germanic law." "Disputes in Gaul," 17.

²⁹ The question of a penitent's ability to release a confessor from the seal of secrecy was debated in the Middle Ages. Theutberga's case is noted in the still invaluable Bertrand Kurtscheid, *A History of the Seal of Confession*, ed. and trans. Arthur Preuss (St. Louis, MO: B. Herder, 1927), 82–86, who considers that "extrinsically her confession bore the character of a sacramental confession" and that Hincmar rejects the validity of Theutberga's permission because he believed it "to have been obtained under duress." On the technical and philosophical aspects of the seal of confession and its constraints and permissions in law, see also John R. Roos, *The Seal of Confession* (Washington, DC:

little or no personality in law, she was possibly not permitted to offer her own testimony, although the brief seems to accept that, at least in a penitential sense, she could and, to some extent, had.³⁰ If Theutberga suspected that Gunthar had already revealed to the other bishops the content of her confession, her request was a challenge to rehearse the offense in her presence.

It is no wonder the bishops, even through the crafted and controlled account of the brief, seem nonplussed. In an attempt to regain a tenable position, Gunthar urged the queen to speak for herself and to reveal what has been hidden. Theutberga demurred, asking why it would be necessary to say something beyond what he already knows. It is, she said, his duty to show her need and to give her permission to do what she wishes,³¹ because, quoting Scripture, “for the whole world I do not wish to lose my soul.” Repeating the phrase, “on account of God and on account of your office,” she asked him again to do as she has charged, so that he not deny her the salvation of her soul.³² These allusions to

Catholic University of America Press, 1960), whose interest in the constancy of practices derived from divine law lessens his attention to the role of historical process; and Dexter Sutton Brewer, *A Penitent's Right to Waive the Obligation of the Seal of Confession: A Comparative Study of Canon and American Law*, Canon Law Studies (Thesis, Catholic University of America, 1993), who opines that “the question of whether a penitent can release a priest from the obligation of the seal seems to have arisen in the thirteenth century, after the Lateran Council of 1215, as no mention is made of the question in the acts of that council” (p. 6). See also the classic Henry Charles Lea, *A History of Auricular Confession and Indulgences in the Latin Church*, 3 vols. (Philadelphia: Lea Brothers & Co., 1896), 1:429–30, 440–41.

³⁰ This accords with the arguments made by Elisabeth van Houts, “Gender and Authority of Oral Witnesses in Europe (800–1300),” *Transactions of the Royal Historical Society* (1999): 201–20, who demonstrates that women’s testimonies were sometimes necessary, although technically prohibited, and who also cites a 13th-century instance of a woman who “had truth on her side but confessed to have done wrong in order to have the case settled”; legal texts sometimes maintained that “if a woman confessed she surely spoke the truth.” (van Houts, “Gender and Authority,” 219–20). See also Susanne Degenring, “Die Frau die (wider-)spricht: Gelehrte Juristen über Frauen als Zeuginnen in Prozessen ihrer Männer,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 116:85 (1999): 203–24.

³¹ “Acting with her lord, Lothar” (pariter cum seniore meo). Cp. *De divortio*, 121, l. 17: “ac propter fidelitatem erga seniore meum.” *De divortio*, 115.

³² “Cui memoratus episcopus: ‘Bonum est,’ inquit, ‘ut tu ipsa istis meis confratribus, quod adhuc latet, aperias, quatinus ex tuo proprio ore, quod diiudicent, audiant.’ Et illa: ‘Quid necesse est, ait, ut aliter dicam, nisi sicut tu nosti? Propter deum tibi sit, ut tu eis manifestes meam necessitatem, quo pariter cum seniore meo mihi licentiam detis, ut, quod desidero, faciam, quia,’ inquit, ‘pro toto mundo nolo meam animam perdere. Et ideo rogo vos propter deum et propter ministerium, quod suscepistis, ut mihi, quod postulo, ad salutem animae meae non denegetis.’” *De divortio*, 115.

the Gospel of Mark and Psalm 34 are the only biblical references in the bishops' brief.

In recalling to the bishops their ministerial responsibility to care for her soul and linking it to her request for permission to enter a convent, Theutberga raised another question regarding her religious status and autonomy. Carolingian bishops seem to have favoured sojourns in monasteries as the salutary and visible change of life undertaken by public penitents.³³ Theutberga's request pre-empted such an assignment and raises further questions about the degree of control that she was trying to exercise over the interview. It was an instance in which ambiguity could have served all parties: entering a convent might be seen either as a prescribed penance or as an independent and voluntary declaration of a vocation, a vocation that coincidentally had a penitential orientation. In view of Theutberga's position as a fatherless woman who, under the circumstances, could not go to her brother's household, a convent may have seemed the best prospect for a new home if she and Lothar could not be reconciled.

Curiously, as presented in the brief, the bishops did not grasp the diplomatic potential of the solution: the text does not have them address the matter of Theutberga's salvation except with reference to the perils of false testimony. Instead, the brief continues its record of the bishops' concern to observe all protocols correctly. Ignoring the possibilities for theological or pastoral discourse, the bishops are said to have continued their questioning as in a legal deposition. "Then we bishops, testing [her statement], asked whether she would wish to lodge any further complaint or to undertake any crafty stratagem, if there were a satisfying answer to her petition." Again, the brief gives a clear, noble, yet legally prudent voice to the queen: "To which she replied freely: 'Through that faith which I cultivate,' she said, 'I promise to you before God that for eternity neither through me nor through my cleverness shall I lay any charge.'"³⁴

³³ See the important and thoughtful argument of Mayke de Jong, "Monastic Prisoners or Opting Out? Political Coercion and Honour in the Frankish Kingdoms," in *Topographies of Power in the Early Middle Ages*, vol. 6, ed. Mayke de Jong and Frans Theuvs, Transformation of the Roman World (Leiden: Brill Academic Publishers, 2001), 291–328; and also that of Valerie Flint, "Space and Discipline in Early Medieval Europe," in *Medieval Practices of Space*, vol. 23, ed. Barbara Hanawalt and Michal Kobińska, Medieval Cultures (Minneapolis: University of Minnesota Press, 2000), 149–66.

³⁴ "Tunc nos episcopi temptantes requisivimus, an ipsa ulterius vellet inde aliquam querimoniam movere aut aliquas insidias moliri, si suae petitioni satisfactum fieret.

In its last chapter, the brief appears to detail a markedly legalistic solution to the problem posed by Theutberga's reluctance to give a public confession. "Finally," it reports, "we learned from our *confrère* (who grieved and was in anguish and very sorry that he had ever been aware of this confession) something about this matter which, in the manner of one doing penance was to be told out loud, *viva voce*, to the brothers and fellow-bishops according to the condition stipulated, so that (just as was stated in the first chapter) when they have perceived the evidence of the hitherto hidden case, they may all arrive at one opinion, and by consensus expel error and establish truth."³⁵ Buried in the evasive syntax of the usually direct brief appears to be the fact that it was Gunthar who spoke vicariously for Theutberga. Even though Theutberga would not confess, the confession was made; it was delivered *viva voce* as required; it was heard by the bishops; it could stand as the basis for their judgement.

Such was the bishops' view of the confession, seen through the lens of canonical and pastoral precepts and evaluated with respect to episcopal authority and constraints. The two other documents Hincmar cites in *De divortio* show different perspectives in which, although informed by Christian definitions of sinfulness, Theutberga's confession was obtained as legal evidence suitable for submission in secular proceedings, rather than as part of a pastoral ministry. Both "the royal account" and "the expanded version" suggest that religious standards and secular law had coalesced into a set of formal procedures. In secular judicial processes, however, the standards for a valid and acceptable confession were traditionally different than in the penitential forum. The integration of secular and religious patterns encompassed a critical conflict of rationales, especially with respect to the privacy of the content, the permissibility of coercion, and the intended result of the process.

Ad quod illa libera voce: 'Per eam fidem, quam colo,' ait, 'vobis coram deo promitto, quia in aeternum nec per me ipsam nec per meum ingenium ullam inde querelam movebo.' *De divortio*, 116.

³⁵ "Quid denique a sepefato confratre nostro de hac re multum triste et angustiant ac lugente atque, quod umquam illius confessionis conscius extitit, admodum poenitente didicimus, hoc fratribus et co-episcopis iuxta conditionem datae licentiae viva voce narrandum est, ut, sicut in primordio dictum est, cum argumenta hactenus latentis causae perceperint, uno eodemque omnes consilio et consensu errorem expellant et verum statuunt." *De divortio*, 116. (One might construe the Latin as saying that the confession was to be spoken to the bishops, and that they are the auditors, not the agents stipulating the requirement of an oral confession).

*Legal dimensions of confession:
Signed, sealed, and delivered*

As if he were reviewing for the reader the briefs in the case before setting forth his opinions and their rationales, Hincmar, after discussing some of the noteworthy features of the "bishops' brief," presents without introduction the text of the "royal account," only to dismiss it with the comment, "We have decided that it is more reasonable to be silent than to respond [to this account], since, just as in irrationality it is largely similar to the previous one, so is it dissimilar to truth and reason, so that it ought not be believed to have been something compiled by the aforementioned bishops."³⁶ In other words, it is in Hincmar's view a dubious source or one showing even graver flaws in protocol than the bishops' brief, and whatever portions of its content coincide with that of the bishops' brief can be considered as having been already reviewed.

The "royal account" merits some attention, however, not only because Hincmar included it despite his rejection of it but also because it seems to confirm that the validity of Theutberga's confession was subject to debate. Like the bishops' brief, the royal account asserts that Gunthar revealed the content of a secret and religious confession (made "before God and all his angels"), and that the bishops discerned that it was not permitted to Lothar to have Theutberga as his wife. In contrast to the representation in the bishops' brief, the authority to enquire and judge resided with the king, and the clerics who conducted the investigation were royal servants. It is no wonder that Hincmar sought to dismiss the image of such complete subordination of the episcopate to royal power; it is not surprising that some in the royal court found it attractive.

The shift from an episcopal to a royal perspective alters more than the location of authority: the position of Theutberga in the proceedings is significantly reduced. Rather than acting as a religious penitent whose volition and interest in salvific remedy are essential criteria for a valid confession, Theutberga is scarcely present, and she is accorded no direct speech in the royal account. Gunthar's revelation of her confession is not at her behest but results from Lothar's order to the

³⁶ "De hoc libello rationabilius tacere quam respondere delegimus, quoniam, sicuti praemisso inrationabilite ex maiori parte habetur consimilis, ita veritati et rationi adeo habetur dissimilis, ut credi non debeat a praefatis confectus episcopis." *De divortio*, 120.

bishops to find out whether the rumours concerning his wife are true. It is reported, however, that Theutberga petitioned to be allowed to “change her secular garb and to withdraw from masculine company” and that she did this with no deceit arising from anger or ill-will toward the king (a statement echoing the promise elicited from her in the bishops’ account that she had no further designs). The objective, however, is that the king obtain relief and that Theutberga weep for what she had done wrong. The royal account has the premise that in legal proceedings, justice entails remedy for the victim, not salvation of the confessant’s soul. There is a Christian affect in the descriptions of the king’s relief as one of both body and soul and of the remorse sought from Theutberga as a grace to be attained through the mercy of God and the prayers of the bishops, but the basic orientation of the royal account is toward legal rather than religious remedy.³⁷

That different orientation is reflected in the choreography of the participants. Theutberga, the confessant, is not the center of attention but is placed, as it were, off-stage. Lothar’s relation to the bishops in the royal account is not as a sorrowing Christian, as in the bishops’ brief, but as their monarch and a judge with a case to resolve. The story of the king’s secret colloquy is not that it was penitential but that there were frequent private (*secretae*) as well as open gatherings with his supporters to try to arrive at a decision as rumours of a terrible crime and hidden wound in Theutberga flew from mouth to mouth.³⁸ In order that the suspicions be properly examined and tested, Lothar by royal authority convened bishops, abbots, and other nobles at Aachen and commanded that the bishops and abbots investigate. This they did, says the royal account, for they had the secret confession of the queen, in which “every secret according to the arisen rumour was made clear to them,” and thus they informed the king that it was not permitted to him to have Theutberga as his wife.³⁹ Seemingly by his own volition, Gunthar relays

³⁷ *De divortio*, 120.

³⁸ “...dictum est eidem principi a quibusdam, quomodo memorata Tetberga scelus quoddam horribile ac nefas patratum vulnus occultum in animo sive in corpore haberet... Ex opinione vero praemissa, quae de illa per ora quorundam volitabat, praefatus rex in conspectu fidelium suorum secretae ac manifeste frequenter conlocutus fuit et cum eis rationes habuit, unde iudicium postea per ipsorum consilium extitit factum, sed non divina pietas indulgente rei veritatem manifestare voluit.” *De divortio*, 119–20.

³⁹ “Nam ipsa confessa est eis coram deo et angelis eius omnia, quaeque in illa erant, omneque secretum iuxta exortam famam paenitus aperuit illis, ipsique reversi nuntiaverunt praedicto regi, quod ad uxorem non liceret eam illi habere.” *De divortio*, 120.

(in direct speech) the content of the confession and the queen's request to enter a convent. The bishops Adventius and Theutgaud opine that Lothar and Theutberga ought not associate as man and wife and that Lothar should permit Theutberga to take the veil.

As a further sign of Theutberga's status as defendant rather than penitent, in the royal account, she does not challenge the bishops with legal cunning: rather, she is presented as a victim. According to the royal account, when Gunthar revealed Theutberga's confession, he reported that the stain incurred by the queen was that she was raped. There are no details about the circumstances or the perpetrator, simply the explanation that the wound borne inside (*in se...interius*) Theutberga had come about not by her will but by violence.⁴⁰ The abbot Egil, on Theutberga's behalf (*vice eiusdem Theutbergae*), pleaded to Lothar that because she did not willingly commit a criminal act, but was taken by force, the gift of being veiled should be granted to her, as well as a place where she might heal the inflicted wound. As in the bishops' brief, the plea includes the purpose: "for the love of God and the salvation of her soul."

The royal account, then, treats the protocols of legal and penitential authority quite differently than does the bishops' brief. The royal account is not concerned with the need for Theutberga to deliver her confession *viva voce* to the bishops. There is no coyness about saying that Gunthar revealed the content of the confession. The embassy, here described with notarial formulae as a formal royal council, was under the king's control. The queen did not ask the bishops to minister to her, and it was Lothar who would determine whether she might enter a convent. Both episcopal autonomy and Theutberga's voluntary participation are compromised in this account, and the focus of the judicial investigation also moves from the spiritual to the secular in the identification of Theutberga's marital incapacity as that of a raped, rather than sinful and perhaps witchcrafting, woman. Her confession in the royal account establishes relevant facts in the case, rather than revealing the state of her soul.

The royal account has some significant correspondences to the presentation of events in the third source cited by Hincmar, the "expanded version" of the story. The "expanded version," however, deviates wildly

⁴⁰ "...quod vulnus in se haberet interius, non tamen sua sponte, sed violenter sibi inlatum..." *De divortio*, 120.

from the bishops' brief and the royal account in ways that suggest an effort to remedy the defects in the religious and judicial processes revealed in both of those texts. In Hincmar's view, this third description encapsulated the juridical crisis: indiscriminate recourse both to the religious interrogation and judgements made in the penitential forum and to the juridical investigation and judgements made in secular law had produced a monstrous hybrid.

The "expanded version" does not have the linear narrative form of the "bishops' brief" and the "royal account" but presents itself as a précis of what transpired at a public assembly. The status of the gathering is uncertain, although it is described in the opening passage cited by Hincmar: during a "general meeting of the nobles" from Lothar's kingdom, resolved upon by all three kings of the partitioned Empire, there took place at the royal palace at Aachen a "council of bishops"; seven are named.⁴¹ The "expanded version" seems ambiguous from the start, then, about the jurisdictional authority of the assembly receiving Theutberga's confession: it is under secular auspices, but easily construed as an episcopal council or synod; yet it is convened neither by royal authority nor through metropolitical summons.⁴² It is neither the episcopal embassy summoned for counsel in the "bishops' brief" nor the cabinet of royal advisors commissioned to investigate in the "royal account."

The indeterminacy of the legal prerogative of the group is also evident in the careful melding in the report of secular and clerical roles in the proceedings: Theutberga first tells the king the nature of the crime, then encapsulates her account for some of the bishops and laics; she places her written confession in Lothar's hand in the presence of the bishops and of many of the laity, and delivers her plea, addressed to the king, "speaking openly, before all"; her written confession is made "before God and his angels, and to the venerable bishops or noble laics."⁴³ After

⁴¹ "Anno ab incarnatione domini DCCCLX, indictione VIII, mediante Februario mense decernentibus gloriosis regibus Hludowico, Carolo atque Hlothario iuniore in generali conventu obtinatum ex regno almi Hlotharii actum est concilium episcoporum Aquisgrani palatio..." *De divortio*, 121.

⁴² On mixed assemblies, see Wilfried Hartmann, "Laien auf Synoden der Karolingerzeit," *Annuario Historiae Conciliorum* 10 (1978): 249–69; and Wilfried Hartmann, "Zu einigen Problemen der karolingischen Konzilsgeschichte," *Annuario Historiae Conciliorum* 9 (1977): 6–28.

⁴³ "Ego Thietbrihc... veram confessionem coram deo et sanctis angelis eius ac venerabilibus episcopis sive nobilibus laicis sic profiteor..." *De divortio*, 121.

examining both the queen and Lothar, the bishops,⁴⁴ first privately and then before the lay nobles, exhort the queen not to give false testimony, and the laity admonish her in the same way, “especially her relatives and friends.”⁴⁵ In sum, the author(s) of the “expanded version” is concerned to diffuse the verdict on Theutberga across as wide a range of participants as possible and to cast the bishops’ sentence of public penance as the expression of community consensus.

There is also an effort to ratify Lothar’s royal authority in the proceedings, as well as to demonstrate that there was no improper respect of person and that the king was treated as subject to the same law as any other party to a case. At the same time, not only does Theutberga place her confession in Lothar’s hand but also the language of her plea suggests that it is he who has the authority to determine whether she can be redeemed. In the direct speech ascribed to her, Theutberga asks that it be permitted to her to do penance, and she asks this both for God and for Lothar’s recompense: “Therefore, prostrate, beseeching, I ask that you not deny to me, now and thereafter, that which may be able to assist in my salvation in the future.”⁴⁶ The chapter dedicated to establishing that Theutberga’s confession was not coerced goes beyond the other accounts in detailing the question put to her regarding the honesty and freeness of the confession. It also asserts that, just to be sure, the bishops questioned Lothar, in order to determine whether he had compelled Theutberga to falsely incriminate herself. At this point, the account seems to protest excessively, by recounting at some length the king’s claim that he was so distressed by Theutberga’s confession to him that he wished to hide the whole sordid matter and tried to figure out how he might do so, in view of the rampant rumours. Secrecy was, however, impossible.⁴⁷ It is in this context that Lothar’s tears, sighs, and grief are thoroughly documented.

⁴⁴ The “expanded version” soon establishes its episcopal origin with its use of “we,” in contrast to lay observers.

⁴⁵ “Nos igitur rursus eandem mulierem primum secreto, deinde coram laicis adiuimus eamque cum adiuratione divina monitis pluribus exhortati sumus, ne sibi ullo modo falsum crimen inferret... Sic et laici plurimum eam admonuerunt, maxime ipsius familiares et amici...” *De divortio*, 122.

⁴⁶ “‘Domine mi rex,’ inquit, ‘propter deum rogo et propter vestram mercedem, ut mihi poenitentiam agere liceat... Ideoque prostrata suppliciter expostulo, ut mihi iam nunc et deinceps non denegetis, quod meae saluti posthac succurrere potest.’” *De divortio*, 121.

⁴⁷ *De divortio*, 122.

Balancing Lothar's complex role as victim, ruler, and witness is Theutberga's role as penitent, possible victim, and petitioner. To satisfy the requirements of the penitentially shaded resolution in the expanded version, Theutberga must be given more volition than she had in the "royal account." There is, however, considerable subtlety in the balance maintained between the agency required for her confession and her agency in the commission of a sin or crime. As in the other documents, the impression left is that Theutberga confessed, but to very little, and that her confession was as much a tool for defense as prosecution. Her prosecutors had to inflate the significance of a confession that gave them very little of substance; her defenders could use the avenues for resolution opened by the gesture of confession, without having to concede any real culpability that might make her vulnerable to more serious consequences.⁴⁸

It is worth pondering the constraints of Theutberga's circumstances, insofar as they can be imagined. She had been found innocent by an ordeal, a "judgement of God"; how could she confess culpability and seemingly nullify a divine verdict? The impropriety of further legal proceedings against her was remarked upon by Hincmar, who recalled the scriptural injunction, "do not test the Lord your God" (Deut. 6:16), and also by Pope Nicolas, who opined that the continued prosecution was contrary to both human and divine law.⁴⁹ While it is possible that Theutberga was impelled either by devotional fervour or psychological distress to reverse her earlier claims of innocence and objection to divorce, given the context of continued prosecution by Lothar and his partisans, it seems more likely that her confession was devised as a legal strategem, as known in later Roman law. Although confession was never a part of the adversarial system for obtaining a true judgement in the classical Roman Law of the Republic, by the time of the Empire it was occasionally used as a defense of last resort.⁵⁰ As such, it was

⁴⁸ Cf. Sdralek, *Hinkmars kanonistisches Gutachten*, 103–08; "Viderint autem legum iudices, si verum inventum fuerit, quod de hac femina dicitur... utrum eam morte condemnari decernent sive per legem Romanam aut per illorum leges vel quibus illa femina est subiecta vel per quas illi eam voluerint iudicare." *De divortio*, 183.

⁴⁹ Hincmar of Rheims, *De divortio*, 160; Nicolas (pope), "Ep. 155: Ad episcopos in regno Ludovici constitutos (a.867)," PL 119, col. 1168.

⁵⁰ Yan Thomas, "Confessus pro iudicato: L'aveu civil et l'aveu pénal à Rome," in *L'Aveu, antiquité et moyen-âge. Actes de la table ronde organisée par l'École française de Rome avec le concours du CNRS et de l'Université de Trieste, Rome 28–30 mars 1984*, Collection de l'École Française de Rome ([Rome] Paris: École française de Rome: Diffusion de Boccard, 1986), 103–05.

a tool of the defendant, not of the prosecution: it did not constitute proof, but rather advanced the case straight to judgement.⁵¹ Further, the defendant was now implicitly under the protection of the person to whom he or she had confessed, whose mercy had been invoked.⁵² Confession, then, gave the defendant more control over the terms of culpability and the extent of punishment.

Its potential usefulness, however, in cases with bleak prospects for the defendant invited jurists to consider the possibility that confessions might be false. And what of the possibility that a confession might contradict a prior verdict of innocence, as in the hypothetical case that a son confessed to murdering his father after a court found otherwise? Some jurists proposed that even if the confession was the fruit of madness, that disease signified the workings of a guilty conscience, and the confession was valid.⁵³ While the legal use of confession in the West between the 5th and 9th centuries remains obscure, it is clear that the Roman law's references to conscience are an important point of intersection with developing Christian views on the penitential obligation to acknowledge before God one's sins, prodded by conscience. As in Roman law, the relationship of the one confessing and the one hearing the confession is then structured around a plea for protection and mercy, but for the Christian, because God knows the truth, there can be no manipulation of the facts of the case.

The possibility that Theutberga's confession was given as a defensive one after the Roman model finds support in the details of the "expanded version." Perhaps the most startling aspect of the "expanded version," aside from the explicit claim that her brother, a cleric, perpetrated unnatural sexual intercourse against Theutberga in her youth, is the text's insistence that her confession was not merely delivered *viva voce* but that there also was written testimony. This testimony was written at Theutberga's command; the text was available to the author(s) of the "expanded version," who quotes it for readers, and it was confirmed with Theutberga's own chyrograph, in the Roman sense of a notarised autograph on a legal document.⁵⁴ The emphasis on the written confession

⁵¹ Thomas, "*Confessus pro iudicato*," 89–95, 112.

⁵² Thomas, "*Confessus pro iudicato*," 104–09. See also Jean Michel David, "La faute et l'abandon: Théories et pratiques judiciaires à Rome à la fin de la République," in *L'Aveu, antiquité et moyen-âge*, 71–72.

⁵³ Thomas, "*Confessus pro iudicato*," 114–16.

⁵⁴ "...si vera propria voce pronuntio et litterarum cyrographo rem gestam confirmo..." Hincmar of Rheims, *De divortio*, 121. See Giovanni Pugliese, "La preuve dans

is so great as to almost contravene the concern in the “bishops’ brief” that to be valid and beyond question, a confession must be delivered *viva voce* (and preferably by the one confessing⁵⁵). The difference, it would seem, relates to the distinction in circumstances described by the two texts. The bishops’ brief depicts a sacramental (or at least spiritual) confession, made in private to an ordained priest; the expanded version presents the confession as an incontrovertible submission of documented testimony (a *cartulam*) given to the highest secular authority and witnessed most publicly.

The purported text of the confession is given in Latin. It is also marked as a legal document intended to preclude interpretative challenges in its stipulation that it contains “these words and this sense.”⁵⁶ It first states the cause of Theutberga’s sin, the reason she is confessing, and to whom: “I, Theutberga, whom the imprudence of the feminine sex and human fragility deceived and conscience stings with respect to a crime, for the hope of my soul’s salvation and because of fidelity to my lord [*seniorem*, as in seigneur, presumably Lothar] proffer thus

le procès romain de l’époque classique,” in *La Preuve. Première Partie: Antiquité*, Recueils de la Société Jean Bodin, vol. 16 (Brussels: Éditions de la Librairie encyclopédique, 1965), 334. There is also a medieval form of the chyrograph as a document cut in parts, so that authenticity can be verified by the fit of the reassembled pieces. See Bernhard Bischoff, “Zur Frühgeschichte des mittelalterliche Chirographum,” in *Mittelalterliche Studien*, 2 vols. (Stuttgart: Hiersemann, 1966–67), 1:118–22. On oral and written testimony in a later period, see Patrick Geary, “Oblivion Between Orality and Textuality in the Tenth Century,” in *Medieval Concepts of the Past*, 111–22.

⁵⁵ Cf. Hincmar of Rheims, *De divortio*, 170. The problem of written confessions is taken up by Thomas of Chobham, c.1215, who in Quaestio XIIIa “De confessione scripta” of his *Summa* notes the position that no-one should confess in writing and then tells, first, a story about an angel revealing a sin of Charlemagne’s by delivering a written account of it to his confessor, an exception by virtue of its miraculous nature (“Istud tamen quod miraculosum fuit non est trahendum ad consequentiam”); and, second, the story of a woman who committed a crime of such enormity that she was unwilling to confess it but was persuaded by her priest to write it out and sign the document and then bury it next to the altar. The priest died; the woman went to the tomb under cover of darkness and argued that her confession might be read by anyone who found it, and a voice from the tomb instructed her to retrieve it; she would find it wholly blank, a sign that her crime had been erased through the written confession. The discussion then moves to the use of written confessions by the mute. Thomas of Chobham, *Summa Confessorum*, ed. F. Broomfield, *Analecta Mediaevalia Namurcensia*, 25 (Louvain and Paris: Éditions Nauwelaerts, 1968), 219–20. I thank Prof. Joseph Goering of the University of Toronto for this reference. See also Lea, *History*, 1:362–67, 436–37.

⁵⁶ “Textus itaque illius scripturae haec verba et hunc sensum continebat.” *De divortio*, 121.

a true confession . . .”⁵⁷ In one sentence, it sets forth the crime that was committed, the unnatural fornication perpetrated upon her by her brother. It then states that the confession is freely made and true: this is the longest portion of the text: “This I testify with my conscience as witness, not persuaded by any malevolent suggestion nor compelled by violent necessity, but of simple will professing the truth of the matter, just as it is. Thus may the Lord assist me, the Lord who came to save sinners and promised true mercy (*indulgentiam*) to those confessing their sins simply and truthfully, if I concoct nothing, if I pronounce truly with my own voice and confirm the thing done with a chyrograph of letters, because it is more bearable to me, an imprudent and deceived woman, to confess guilt simply before men than to blush before the tribunal of the lord, and to have eternal woe.”⁵⁸

In the absence of other writings from her hand, it cannot be known whether Theutberga was so theologically inclined that she would provide this analysis of the cause of her situation. Whoever constructed the explanation of cause or motive, however, by locating it in the general domain of original sin, rather than within a more specific framework of sin or crime, protected Theutberga’s innocence to a considerable degree, as he or she did also in the content of the confession that she had been violated. Theutberga’s guilt, in this account, lay in having been polluted, not in having been led by a perverse will into sin.⁵⁹ Her responsibility for the sin she confessed, despite the horror it evoked,

⁵⁷ “Ego Thietbrihc, quam feminei sexus inprudencia et fragilitas fefellit humana et conscientia delicti mordet, propter spem salutis animae meae ac propter fidelitatem erga seniore meum veram confessionem coram deo et sanctis angelis eius ac venerabilibus episcopis sive nobilibus laicis sic profiteor . . .” *De divortio*, 121. Similar phrasing regarding the legal defects of the feminine sex and fragility of the mind, but without the Christian overtones, is in a “Mandato” model in the *Formulae Avernensis* from a 9th-century manuscript containing Roman law; cf. *Formulae merovingici et karolini aevi*, ed. Karl Zeumer, MGH Leges [hereafter LL], sectio V: Formulae (Hanover: Hahnsche Buchhandlung, 1886; repr. 2001), 29, 26.

⁵⁸ “...quia germanus meus Hucbertus clericus me adulescentulam corripuit et in meo corpore contra naturalem usum fornicationem exercuit et perpetravit. Hoc testificor teste mihi conscientia mea non aliqua malivola suggestionem persuasa neque violenti necessitate compulsa, sed simplici voluntate rei veritatem, sicuti est, professus. Sic me adiuvet dominus, qui peccatores salvare venit et peccata simpliciter et veraciter confitentibus veram indulgentiam promissit, si nihil fingo, si vera propria voce pronuntio et litterarum cyrographo rem gestam confirmo, quia tolerabilius est mihi imprudenti ac deceptae feminae coram hominibus culpam simpliciter confiteri quam ante tribunal domini erubescere atque aeternum vae habere.” *De divortio*, 121.

⁵⁹ The crime to be purged is described as “lugendam incesti pollutionem in publicam exalatum.” *De divortio*, 122.

was thus considerably mitigated. This, then, was a confession that was cast in religious language but was not a confession of culpability, nor, one would think, legally actionable.⁶⁰ The public confession, however, was part of a legal proposition that a public crime should have public resolution. The problem of whether Theutberga's confession should advance her to healing, as would a penitential confession, or punishment, as would a secular confession, was answered with an episcopal verdict that used ambiguous language as the means of compromise. The bishops of the "expanded version" chose the word *purgation*, a term used in both religious and secular processes. "After taking these things into consideration and enquiring diligently, we decreed that the grievous pollution of incest breathed out (*exalatum*) in public was to be purged through the satisfaction of public penance."⁶¹

As a jurist scrutinising these three memoires, Hincmar found much on which to fasten a range of arguments, but running through his diffuse commentary is his concern that the boundary between what moderns would call the private and the public had been violated. He arranged the three documents in the order of the increasingly public exposure of Theutberga. He began with the "bishops' brief," which he reviewed with explicit queries as to why what was subsequently treated as a public matter was deceptively received as if in a secret confession, and proceeded to the most public of the described settings, where the confession was displayed as a written record that could henceforth be transmitted even to those not present. The perception that secrecy and publicity are critical elements in the judicial matrix also shapes the three versions of the delivery of Theutberga's confession. The "bishops' brief" is punctilious in its specification of the permissions and limits in what was said, and it excludes any reference to personnel not qualified to hear a secret, religious confession. The "royal account" indicates that it was in the interest of curtailing a spreading publicity through gossip that a select group of highly placed ministers was convened to assist the king in his decision. The "expanded version" takes as the appropriate stage a public assembly, conducted with some of the practices

⁶⁰ See Chapter Two for discussion of the rationale for seeking penitential purgation for involuntarily contracted conditions.

⁶¹ "His ergo consideratis et diligenter perspectis lugendam incesti pollutionem in publicum exalatum publicae poenitentiae satisfactione purgandum decrevimus." Hincmar of Rheims, *De divortio*, 122. I have used the reading from the TP's quotation of Leo I, "publicae poenitentiae satisfactione" rather than the manuscript's "publica poenitentiae satisfactione." On the language and concept of purgation, vide infra, pp. 76, 80–82, 97–99.

from the courts of Roman law but with the king presiding and bishops rendering the verdict. In the “bishops’ brief,” Theutberga cites her own conscience as the governing authority; in the “royal account” and the “expanded version,” that interior judge is replaced with the image of the full court of “God and his angels.”⁶² Much of what was at stake for Carolingian observers of the royal divorce was whether the allegations about Theutberga would be treated as a matter of the public weal or as pertaining to a wound within an individual, private soul. The different versions of her confession reflected the range of secrecy and public display deemed appropriate by different parties; the religious perspective provided for secrecy, whereas the transactions of secular fora, whether royal or conciliar, called for investigation by and revelation to others. Hincmar’s treatise is all the more valuable because it not only preserves several images of the judicial stage, but also because it is the vehicle for his own meditations on the value of confession as both a religious and a legal device.

Herod’s tears

The sentence pronounced by the bishops at Aachen that Theutberga should undergo public penance seems to have incensed Archbishop Hincmar. In his view, the misadministration of religious obligations and the mingling of sacral and secular practices produced not only confusion but also injustice. His disapproval of the processes that led to the legal impasse he had been asked to clarify arose in part from his anger over the appropriation of penitential rites for secular ends and, in particular, the abuse of the rite of public penance.

The question of who controlled confession, judgement, and penance lies at the heart of the discrepancies among the three accounts of Theutberga’s confession. The bishops’ brief represents the event as essentially sacramental, although in a form so fragile that both the bishops and the queen seem to have tested ways in which the sacrament might be manipulated. The royal account stresses the importance of royal power in the judicial process, although because Lothar was a

⁶² On the relation between the court of conscience and public courts in the Carolingian period, see Abigail Firey, “Blushing before the Judge and Physician: Moral Arbitration in the Carolingian Empire,” in *A New History of Penance*, 171–200.

party to the case, it was necessary to have arbiters and a mediating level of judgement, in this instance the role played by the bishops. The expanded version imagines a communal forum for the deliberation of justice and attempts to synthesise structures of royal authority, extensive participation by the laity, and the power of the clergy to implement measures to guide Christians toward salvation. This last model conforms in many respects to one modern scholarly description of the medieval trial by ordeal: the event could be an opportunity for a community to arrive at judicial consensus, in a process that was invested with religious meaning, in part to alleviate the burden of the responsibility of those passing judgement.⁶³

Hincmar, of course, did not analyse the delivery of justice in modern anthropological terms. For him the stinging problem was that in the proceedings described by the “expanded version,” sacramental penance was the consequence of the verdict of a communal, lay body. This was a judicial miscegenation of the worst sort. Secular bodies could not hear the confessions of Christians seeking spiritual cure and absolution of sin; ecclesiastical bodies could not apply sacred rites of penance and absolution as the sentences of punishment or probation delivered by secular judges. “Because indeed this woman presented the written statement of her accusation, as it is written here, not to the bishops, but to the king and laid bare her crime to the laity, let the king construct the legal judgement and let the married laity judge the wife of the lay king according to [their] law and justice, and, if it comes to episcopal judgement concerning their judgement, let the bishops impose medicinal judgement on her according to ecclesiastical laws.”⁶⁴ This distinction between secular and ecclesiastical judgement was critical for Hincmar, precisely because of the medicinal intent of an episcopal sentence. “To this confession remission, not punishment, is granted by the Lord; it is not extorted by fear, but offered in the hope for relief through medical ministry.”⁶⁵ The very function of the bishop had been compromised by

⁶³ Peter Brown, “Society and the Supernatural,” 311–13.

⁶⁴ “Quia etiam haec femina suae accusationis libellum non episcopis, ut ibi scriptum est, sed regi porrexit et laicis sua crimina denudavit, rex legale iudicium construat et secundum legem ac iustitiam laici coniugati laici regis coniugem iudicent et, si de eorum iudicio ad episcopale iudicium venerit, secundum leges ecclesiasticas episcopi ei iudicium medicinale imponant.” *De divortio*, 123.

⁶⁵ “Huic quoque confessioni a domino repensa est remissio, non punitio, quae non est extorta per metum, sed prolata ad indulgentiae spem per medicabile hortamentum...” *De divortio*, 116.

its inappropriate exercise in a secular court, as had the logic of the two legal systems. Hincmar's castigation of the bishops who participated in these distortions of judicial procedures was biting: "legally, in a regular judgement, even hangmen do not bring the guilty to torture without a sentence having been pronounced, and they do not free someone bound from chains without the indulgence of the principal."⁶⁶

The disjunction between the clearly secular proceedings and the clearly ecclesiastical conclusion was established for Hincmar by the use of the written confession: "Because she accused herself to the king and noble laity through writing, just as according to Roman laws someone accuses another under a condition designated by those same laws, when she has not been legally judged by them or absolved from the sentence by the indulgence of the principal, it does not seem to follow that she should have been punished by the bishops with public penance."⁶⁷ It was perhaps his concern to identify the proceedings as indisputably secular that caused Hincmar to treat the propriety of the use of a written confession with some care, even circumvention. Although he asserted immediately that a written confession is prohibited in canon law because of a ruling by pope Leo the Great, he did not elaborate on this point until some ten responses later, 50 pages in the modern printed edition.⁶⁸ Instead, he put forward the argument that Theutberga's written confession was invalid because of its particular nature: according to Scripture, a woman cannot issue a writ of divorce against her husband, and Theutberga's confession was, *de facto*, such a writ.⁶⁹ It must be remembered that Hincmar's primary objective was to guard the principle of the indissolubility of marriage. "Neither by secret confession nor a delivered writ can they be separated," wrote Hincmar.⁷⁰

⁶⁶ "...cum in iudicio legaliter disposito etiam carnifeces absque prolato iudicio reum ad tormenta non pertrahant nec sine indulgentia principali vinculis conligatum absolvant." *De divortio*, 124.

⁶⁷ "Quoniam quae se apud regem et nobiles laicos accusaverat per scripturam, sicuti secundum leges Romanas quisque accusat alium sub condicione eisdem legibus designata, consequens non videtur, ut ab his legaliter non iudicata vel indulgentia principalis sententiae absoluta ab episcopis poenitentia publica multari debuerit..." *De divortio*, 124.

⁶⁸ "...quia huiusmodi confessionis libellum fieri Leo papa manifestissime prohibet..." *De divortio*, 123. The point is taken up again in Resp. 11, p. 176; vide infra, pp. 57–58.

⁶⁹ "Est etiam, quia mulier viro non potest dare libellum repudii et viro mulieri dare libellum repudii, quod Moyses et non deus evangelio teste permisit, dominus ipse prohibuit." *De divortio*, 128.

⁷⁰ "Vir autem et mulier, quoniam auctoritate sacra dicente iam non sunt duo, sed una caro, secreta confessione vel porrecto libello separari non possunt..." *De divortio*, 129.

The protocol of a written confession in ecclesiastical proceedings could not, however, be so simply dismissed, as Hincmar was aware. Hincmar had been asked, or claimed to have been asked, specifically whether there were not a formal precedent in the written confession that his predecessor as bishop of Rheims, Ebo, had submitted upon the occasion of his public penance. Indeed, Hincmar responds, those who are ignorant of ecclesiastical law, probably laics and such, and who had not been present at that episcopal judgement, might interpret the matter with defective understanding. Hincmar, who was present at the council that judged Ebo, and where Ebo offered the written statement sealed with his own hand, argued that the written confession was neither given nor received as legal proof: it was only after the confession was supported by witnesses and documents, so that the elected judges could render a decision, that he received the synodal sentence, and resigned.⁷¹ Ebo also chose the judges and called the witnesses, and his participation in the process was possible, Hincmar explained, because under canon law, clerics have power over their own bodies in a way that spouses do not. Marriage law should not be construed as analogous to the law governing clerics, who have special liberties because of their celibacy.⁷²

Hincmar's explanation was yet another attempt to clarify the distinctions between ecclesiastical and civil procedures in danger of being effaced in the Carolingian enterprise to create Christian imperial law. If those distinctions were compromised, there could be new constructions of law that transposed patterns from one system into another without regard for the fundamental differences in rationale. The lesson to be drawn from Ebo's case was not that confessed misconduct was grounds for withdrawing from a marriage, as one might argue by analogy to Ebo's withdrawal from episcopal office. Different rules applied. Pollution by sexual misconduct among the married was no cause for separation, while clergy polluted by criminal activity were to be removed from office under rules that also differed from the civil laws governing public officials.⁷³ In short, the variety of conditions among

⁷¹ *De divortio*, 125.

⁷² *De divortio*, 125.

⁷³ "Thus, what civil laws condemn with death in the ministry of the public domain (*rei publicae*), ecclesiastical laws punish with a sentence of demotion or excommunication" [*Sic et quod leges civiles ministerio rei publicae morte condemnant, leges ecclesiasticae degradationis vel excommunicationis iudicio puniunt.*] *De divortio*, 126.

Christians required a variety of laws, and while there may at times be parallels between civil and ecclesiastical legislation and adjudication, wrote Hincmar, there were clear distinctions between the systems. "Just as there is one function for the head and another for the member on account of the diversity of the body, so there is one legal rationale for the priest and another for the people, one for the shepherd and another for the flock."⁷⁴

This strong sense that the distinction between secular and ecclesiastical jurisdictions must be maintained led Hincmar to reject repeatedly the validity of the procedural elements of the divorce that showed ambiguity in form. The meaning of the confession in the "expanded version" was for Hincmar falsified by its written form: it was not a penitential confession, and it could not be a writ of divorce. The bishops' handling of Theutberga's confession in the "bishops' brief" was falsified by the form of their reception of her as a private penitent, even though it appeared that the content of the confession was publicly known. The sentence of public penance in the "expanded version" was nonsensical, because there was no form of a constituted body that could deliver it.

Even the king's grief over Theutberga's confession was an offensive breach of the formal order, Hincmar implied. By weeping and sighing, the king entered the theatre of penance. The shedding of tears was, in the view of some clerics, including Hincmar, even sacramental: the tears were another baptism, washing away sins.⁷⁵ The degree to which public weeping had become closely associated with penitential contrition in the Carolingian period is remarkable. So pronounced was the correlation that, confronted with the attestation to the king's tears, Hincmar perceived them as a penitential display, but a suspect one. "Concerning that which is written there [in the "expanded version"] that over such a saddening fact the king grieved and the deed made him unhappy, there should be caution, lest his sorrow be not an ablution, but (heaven

⁷⁴ "...quoniam, sicut aliud officium capitis et aliud membri alterius pro diversitate est corporis, ita alia causa est sacerdotis et alia causa est plebis aliaque pastoris et alia gregis." *De divortio*, 127.

⁷⁵ See H. Conrad-O'Briain and Thomas O'Loughlin, "The 'Baptism of Tears' in Early Anglo-Saxon Sources," *Anglo-Saxon England* 22 (1993): 65–83. See also Piroška Nagy, *Le don des larmes au Moyen Âge: Un instrument spirituel en quête d'institution (V^e–XIII^e siècle)* (Paris: Albin Michel, 2000), who not only cites John Climacus' analogy of tears and baptism (p. 95) but also notes the penchant of Gregory the Great for the phrase "baptism of tears" (p. 130). Nagy proposes that during the 8th and 9th centuries there was increasing attention to the phenomenon of tears as a sign of compunction (pp. 160–67).

forfend), a confession of guilt.”⁷⁶ This sharp reproof, an almost ironic comparison of Lothar’s tears and Theutberga’s dry-eyed confession, Hincmar explained with reference to Bede’s observation that “the grief of king Herod is like the penitence of Pharaoh and Judas... And so Herod, when petitioned for the head of John the Baptist, made a pretense of sorrow in his demeanour, because he would condemn himself, showing clearly to all that he knew the holy man was innocent, whom he would deliver to be killed.”⁷⁷

Such reflections derive from Hincmar’s concern that justice on this earth can so easily, it seems, be perverted. In the king’s grief, there was the possibility that the very semiotics of penance had been fractured. This was the crisis for Hincmar: even the king’s tears might be utterly, unbearably false. The public grief might be mere acting, or even a sign of true and unacknowledged, unaddressed guilt. Indeed, the penitential forms that had been so thoroughly twisted and betrayed in the divorce were vulnerable to corruption precisely because of their public nature. Public events could be mere theatre, fictions presented both to please and, in turn, manipulate an audience. On the public stage there were many opportunities for deception.

Susannah: A true heart

The anxiety over falsehood seems not to have been an idiosyncrasy of Hincmar’s. A range of contemporary sources shows concern that justice might be betrayed by false confessions, false accusations, false testimony, false judgements.⁷⁸ So extensive was the uncertainty with

⁷⁶ “De hoc, quod ibi scriptum est, quod de tali facto rex doluit et contristato ei actio ista displicuit, cavendum illi est, ne *tristitia eius non sit ablutio, sed sceleris*, quod absit, *confessio*.” *De divortio*, 123.

⁷⁷ “Talis quippe est tristitia Herodis qualis poenitentia faraonis et Iudae, quorum quisque facinora sua, postquam accusante conscientia invitus prodidit, vecors augmentavit. Itaque Herodes caput Iohannis petitus tristitiam quidem praetendebat in vultu, quia se ipse damnaret, ostendendo cunctis liquido, quia insontem noverat et sanctum, quem erat neci daturus.” *De divortio*, 123.

⁷⁸ Hermann Nehlsen, “Der Schutz von Rechtsaufzeichnungen gegen Fälscher in den Germanenreichen,” in *Fälschungen im Mittelalter. Internationaler Kongreß der Monumenta Germaniae Historica, München, 16.–19. September 1986*, *Schriften der Monumenta Germaniae Historica*, vol. 33, I–V (Hanover: Hahnsche Buchhandlung, 1988), II:545–76; Michel Banniard, “Vrais aveux et fausses confessions du IX^e au XI^e siècle: Vers une écriture autobiographique?” in *L’Aveu: Antiquité et moyen-âge*, 215–41; Peter Herde, “Die Bestrafung von Fälschern nach weltlichen und kirchlichen

regard to the integrity of judicial proceedings that among the questions posed to Hincmar was whether even the divine judgement of the ordeal might be corruptable.⁷⁹ The focus of such queries was, naturally, the evasion of truth by the accused, not the possibility of supernal error. Could a profession of innocence be in some sense true, so as to yield a sign of God's acquittal, but also be false with regard to the actual fact of the defendant's guilt, and thus an evasion of justice?⁸⁰ Those seeking Hincmar's counsel imagined possibilities for casuistry and epistemological sleight of hand in a divine tribunal, as if it, like human courts, were a forum for the exercise of legal acuity.⁸¹ In these questions, Theutberga's confession once again is at the center of the juridical tangle.

Hincmar's discussion of the ordeal shifts the focus to the power and knowledge of the judge, rather than the cunning of the accused. Yet even this approach shows his faith that procedure is crucial to the administration of justice. Prosecutions pursued in the human sphere, in particular, must have procedural protocols that are regular and constant, unaffected by the heat and dust of a specific case. Citing a rule articulated in the contemporary Pseudo-Isidorian forged decretals, Hincmar reminds his readers that in every judgement, for it to be fair, there must always be four persons present: the chosen judges, those accusing, those defending, and witnesses. Further, no-one can be judged, unless present and either proven guilty or having certainly confessed to guilt.⁸² The need for all four parties is a point that Hincmar wished to make so forcefully that he then also provided a battery of corroborating citations from the Apostle Paul, a canon from the sixth Council of Toledo, two canons from the Council of Chalcedon, papal letters, Sts. Augustine and Ambrose, and Roman law.

Rechtsquellen," in *Fälschungen im Mittelalter*, II:582–88. For very important reflections on conceptual issues, albeit of a much later period, see Richard Firth Green, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia: University of Pennsylvania Press, 1999).

⁷⁹ Interrogationes et Responsiones VI, VII, VIII et passim. Cf. Ralph J. Hexter, *Equivocal Oaths and Ordeals in Medieval Literature* (Cambridge, MA: Harvard University Press, 1975).

⁸⁰ If, for example, Theutberga meditated upon another name than that of the brother with whom she was alleged to have committed incest. Interrogatio VI, *De divortio*, 146.

⁸¹ Interrogatio VII: "Qui dicunt, quod pro secrete facta confessione ab eadem femina vicarius eius de iudicio incoctus evasit." *De divortio*, 161.

⁸² For the conditions under which judgement can be made in the absence of the accused, see *De divortio*, 170.

Hincmar was neither unusual nor innovative in his description of the mechanisms for a fair trial. Almost all of the citations he offered on this point were drawn from the most widely circulated lawbooks of his time.⁸³ They would seem to have been common legal precepts. Hincmar presents these texts, however, not simply as prescriptions for procedure but as the basis for understanding the nature of judicial truth, and the dreadful consequences of failures to discern truth. No juridical optimist, Hincmar recognised that although the four parties of a court case were required, they were not sufficient for the delivery of justice. Legal protocols were but thin defenses against diabolical falsehood.

The incident of flawed justice that seemed to loom in his mind as he assessed the prosecution of Theutberga was the story of Susannah, in the Vulgate Bible, the 13th chapter of the Book of Daniel. The parallels between the cases could easily invite someone sympathetic to Theutberga to adduce the story as a guide to interpretation of the divorce proceedings. It will be recalled that Susannah was the beautiful wife of the rich man Joachim and the object of the lust of two elders. One day, when she went into the garden to bathe, they accosted her and told her that, unless she succumbed to them, they would accuse her of having a rendezvous with a young man. Susannah saved herself from their advances; the next day the elders formally accused her of adultery, and Susannah was convicted. As she was led away to execution, Daniel convinced the people to allow him to re-examine the case. He questioned the elders separately and found a discrepancy in their accounts which showed that their accusation was fabricated. The elders were then executed as Susannah would have been.

While the story might appear at first as a cautionary tale against false accusations of adultery and a vivid depiction of the corruption of those in positions of power, Hincmar's purpose for referring to Susannah was not so simple. He read the text as would a jurist: it provided one of the few scriptural paradigms for court procedure. Even before the divorce case, he had turned to it for clarification of legal protocols. In a treatise written in 852 in which he addressed the question of how many witnesses are necessary for conviction, he had pointed out that two, as in

⁸³ The canons are found in the Pseudo-Isidorian Decretals and the *Collectio Dacheriana*, which drew the relevant canons from the well-known *Collectio Hispana* and the *Statuta ecclesiae antiqua*, as well as the *Collectio Dionysiana* or *Dionysio-Hadriana*. All were standard and frequently consulted repositories of canon law in the Carolingian period.

the case of the elders, may not secure fair judgement, and that seven, or in some cases, 14 or even 21 might seem necessary; elsewhere he observed that even the words of clerics might require confirmation (as he put it, “even among the angels there is found wickedness”).⁸⁴

In his meditations upon the divorce, among the aspects of the story he found noteworthy were that Susannah was judged publicly and that she came to judgement through summons which caused her to be present in the court. Scripture thus seemed to confirm Hincmar’s juridical opinion that neither the secret confession reported in the “bishops’ brief” nor the written confession reproduced in the “expanded version” were legitimate means of initiating a public judgement, or at least of securing public penance. “Neither should anyone be subjected to public penance through a submitted secret bill of confession; and not through any writing directed or drawn up by anyone in his place should someone be condemned, but when anyone should be judged publicly, he ought also to be present, placed in public, whether to be convicted or to confess.”⁸⁵ Susannah’s case illustrated that, in order to obtain the presence of the accused in a public court, there must be proper summons, not merely a secret or indirect report, for the story records both the summons and her presence before the judges.⁸⁶ That accusations and judgements must be publicly delivered Hincmar found also confirmed in the Gospel account (John 8) of the woman taken in adultery but whose accusers and judges disappeared and whom Christ therefore refused to condemn.⁸⁷

These precedents showed that in Scripture, public courts were legitimate but inadequate vehicles for the delivery of justice. The verdicts on

⁸⁴ “Et quoniam, ut scriptum est, et in angelis reperta est nequitia.” Hincmar of Rheims, “Zweites Kapitular,” in *Capitula Episcoporum*, II, ed. Rudolf Pokorny and Martina Stratmann, MGH Capitula episcoporum [hereafter Capit. episc.] II (Hanover: Hahnsche Buchhandlung, 1995), 60–61. See also *De presbiteris criminosis: Ein Memorandum Erzbischof Hinkmars von Reims über straffällige Kleriker*, ed. Gerhard Schmitz, MGH Studien und Texte, 34 (Hanover: Hahnsche Buchhandlung, 2004), 80–81, for the identical passage on the number of witnesses needed as in the capitulary, but without the comment about the angels.

⁸⁵ “...neque libello secreto confessionis porrecto publicae poenitentiae quisquam debet submitti nec per scripturam directam vel ab alio porrectam valeat condemnari, sed unde publice debet iudicari, publice et in praesenti positus debet aut convinci aut confiteri.” *De divortio*, 174. “*Convicti confessique* est une asyndète où *confessus* prend le sens très fréquemment attesté de ‘contraint de se rendre à l’évidence.’” Thomas, “*Confessus pro iudicato*,” 102.

⁸⁶ *De divortio*, 174.

⁸⁷ *De divortio*, 174.

Susannah and the woman taken in adultery were changed by revelations of divine judgement subsequent to the human prosecutions of their cases: Daniel and Christ intervened. As Hincmar traced the progress of these cases from human to divine judgement, he discerned that the religious rituals of penitential confession and the judicial ordeal could be appended to the procedures of secular justice to allow some knowledge of truth, and hence justice, to be delivered to the living, when human procedures failed. Both rituals involved the vicarious representation of divine arbitration in the person of the bishop.⁸⁸ A penitential forum seems indicated when Hincmar elaborates upon the text of Daniel with reference to the medicine of episcopal judgement, a phrase usually associated with penance: "Susannah, when she was falsely accused of the crime of adultery, was both publicly condemned and publicly absolved... On this account, if any woman be apprehended in adultery, from the Law of Moses, which the Lord promulgated in the Old Testament, or from the public laws of Christians, which holy Church embraces, and comes to episcopal judgement, there is most sufficient and manifest medicine and made by the wholesome tradition of apostolic men, by which without any error of ambiguity by divine grace and ecclesial faith she may be treated."⁸⁹

⁸⁸ For the earlier history of the judicial role of bishops, see the important comments of Jill Harries, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 1999), ch. 10, "Dispute Settlement II: *Episcopalis audientia*" (pp. 191–211). See also Robert M. Frakes, *Contra potentium iniurias: The Defensor civitatis and Late Roman Justice*, Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 90 (Munich: C.H. Beck, 2001), 195–229; Noel E. Lenski, "Evidence for the *Audientia Episcopalis* in the New Letters of Augustine," in *Law, Society, and Authority in Late Antiquity*, ed. Ralph W. Mathisen (Oxford: Oxford University Press, 2001), 83–97; and Wilfried Hartmann, "Der Bischof als Richter nach den kirchenrechtlichen Quellen des 4. bis 7. Jahrhunderts," in *La giustizia nell'alto medioevo (secoli V–VIII), 7–13 aprile 1994*, vol. 42, Settimane di Studio del Centro italiano di Studi sull'alto medioevo (Spoleto: Centro italiano di Studi sull'alto medioevo, 1995), II: 805–42. François Bougard, *La justice dans le royaume d'Italie de la fin du VIII^e siècle au début du XI^e siècle*, Bibliothèque des Écoles Françaises d'Athènes et de Rome, 291 (Rome: École Française de Rome, 1995), 236–37, distinguishes between the earlier *audientia episcopalis* and the exercise of judicial authority by bishops in the Carolingian period in synodal proceedings, and also holds that there was no episcopal judgement of laity before the reign of Louis the Pious. He also dates the *synodalis sententia* to the middle of the 9th century.

⁸⁹ "Unde et Susanna, cum falso adulterii crimine accusaretur, et publico iudicio condemnata et publico legitur absoluta... Quapropter, si quaecumque mulier in adulterio deprehensa de lege Moysi, quam dominus in testamento veteri promulgavit, vel de Christianorum legibus publicis, quas amplectitur sancta ecclesia, ad episcopale iudicium venerit, medicina est manifestissima atque sufficientissima et salubri apostolicorum traditione virorum confecta, qua sine ullo ambiguitatis errore divina gratia et ecclesiastica pietate medicari valebit." *De Divortio*, 145–46.

Elsewhere he linked Susannah to the only biblical warrant for the ordeal ever found, the test of the “bitter waters”: “In the Book of Numbers it is laid down that if a woman is accused of adultery or attacked by false suspicion, and her husband was ardent in zeal against her, he should take her to the priests and offer her to divine judgement to be condemned or set free.”⁹⁰ The legitimacy of human courts did not preclude divine reversal of their verdicts: “Thus, when Susannah was falsely accused of the crime of adultery, she was condemned in a public judgement and publicly absolved, and also that woman in the Gospels, who was legitimately taken in adultery, was first summoned according to the law of the Pharisees, who exercised the authority of judging over the people, and only later by the grace of temptation was she led to the judgement of the Lord, where by her admirable piety and supplication that she be spared stoning did she merit release from the guilt of her crime.”⁹¹

For Hincmar, penitential confession and the judicial ordeal had the same purpose: the affirmation of the truth known to God. They were not distinct processes—and hence both could be referred to as “the sacrament of purgation”⁹²—but different forensic procedures for that affirmation, the former suited to those ready to proclaim and to know the truth, the latter suited to those (whether accused or prosecuting) who were not. Such an elision of ritual forms was fully consistent with the perceptions of his contemporaries. Ninth-century ordeal liturgies are, in fact, among the few texts that contain allusions to Susannah: she is

⁹⁰ Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford [Oxfordshire] and New York: Clarendon Press and Oxford University Press, 1986), 83–85. *De divortio*, 226: “In Numeri [Numbers 5:11–31] quoque libro precipitur, ut si qua mulier vel adulterii rea vel falsa suspicione fuerit appetita et vir eius zelo adversus eam fuerit concitatus, adducat illam ad sacerdotes et divino iudicio vel damnamam offerat vel liberandam.”

⁹¹ *De divortio*, 226: “...et illa mulier in evangelio [John 8:3–11], quae veraciter in adulterio fuerat deprehensa, primum iuxta legem ad phariseos, qui potestatem iudicii in populo exercebant, deinde etiam temptandi gratia ad domini iudicium perducta est, ubi eius admirabili pietate et a lapidationis supplicio et a criminis reatu meruit liberari.” Vide supra, note 89, for an almost identical passage (*De divortio* 145–46), including the allusion to the woman in the Gospels (omitted in that note). In both instances, Hincmar is quoting from *De raptu viduarum* cap. 8, a text he may have helped to compile: see the comments of Böhringer, *De divortio*, 68–71. For references to sources and parallels, see *De divortio*, 146 nn.87 and 88, 226 n.38.

⁹² *De divortio*, 161, 167. On Carolingian reflections on purgation, vide infra, Chapter Two (“Purgative Justice: Tears Extinguish Fire”). On the term *sacramentum* with respect to oath-swearing in Roman law, see Gerardo Brogini, “La preuve dans l’ancien droit romain,” in *La Preuve. Première Partie: Antiquité*, 244–48.

remembered in the benedictions' catalogues of the innocent, the falsely accused. "Most merciful one, grant, we beg: if someone innocent of this theft or outrage, or the cause of our inquiry, immune and untrammelled, puts his hand into this water, just as you delivered Susannah from a false charge, so let him bring forth his hand whole and unharmed."⁹³ "You who saved the three boys, Sidra, Misac, and Abdenago, placed by the order of the king of Babylon into a burning, fiery furnace, and who led them forth unharmed through your angel, you, most merciful, grant that if someone innocent should place his hand into this boiling water, just as you plucked those three boys from the burning fire and delivered Susannah from a false crime, so, Lord, may you bring forth his hand from this water whole and unharmed."⁹⁴

The oaths and benedictions used in the ordeal show a deep relationship with the rhetoric of penance. "Thus, Omnipotent God, if anyone guilty, with a heart hardened by a merciless devil [Exod. 8:15], wishes to hide his sins through any magic or through herbs, let your just truth make this public and clear in his body, and may your right hand deign to cast this out, so that his soul may be healed by penance..."⁹⁵ "And if anyone guilty, or with a heart hardened by a coarsening devil, should presume to put in his hand, let your most just piety deign to show this, so that your strength be shown forth in his body and his soul may be saved through penance and confession..."⁹⁶ The rites of the ordeal might also be elaborated with the singing of the seven penitential psalms.⁹⁷

⁹³ "...Praesta, quaesumus, piissime, si quis innocens de hoc furto, vel stupro, seu nostrae inquisitionis causa, immunis atque indebitor in hanc aquam manum miserit, sicut Susannam de falso crimine liberasti, ita et ipse salvam et inlaesam manum educat..." Zeumer, *Formulae*, 604.

⁹⁴ "Qui tres pueros, id est Sidrac, Misac et Abdenago, iussione regis Babylonis missos in caminum ignis accensaeque fornace, salvasti et inlesos per angelum tuum eduxisti, tu, clementissime, presta, ut, si quis innocens in hanc aquam ferventem manum mittat, sicut tres pueros supradictos de camino ignis eripuisti et Susannam de falso crimine liberasti, ita, Domine, manum illius salvam ex hac aqua et inlesam perducas." Zeumer, *Formulae*, 606–07.

⁹⁵ "Ita, Deus omnipotens, si quis culpabilis, ingravante diabolo corde indurato, per aliqua maleficia aut per herbas contegere peccata sua voluerit, tua iustissima hoc veritas in eius corpore declaret et manifestet, atque tua dextera hoc evacuare dignetur, ut anima per poenitentiam sanetur." Zeumer, *Formulae*, 604. Cf. pp. 606–07, 609, 614, passim.

⁹⁶ "Et si quis culpabilis, vel incrassante diabolo cor induratum, presumpserit manum inmittere, tua iustissima pietas hoc declarare dignetur, ut in eius corpore tua virtus manifestetur et anima illius per poenitentiam et confessionem salvetur." Zeumer, *Formulae*, 607.

⁹⁷ Zeumer, *Formulae*, 623, 639, 661. For a detailed study of the use of the penitential psalms in private devotions in the Carolingian period, see Jonathan Black, "Psalm

Unlike public penance, however, the ordeal was not premised upon a voluntary confession offered through contrition but, rather, was a way to reveal the truth guarded by an unwilling, obdurate heart. Like the juridical torture of Roman law, the ordeal was conceived as a carefully controlled method for discerning the truth, but, sacral in its recourse to divine judgement, it was also a process to which penance would be a fitting conclusion.

The integration of the sacral and the juridical in the ordeal was, however, debated. Hincmar's contemporary, Agobard, bishop of Lyons, held that the story of Susannah, far from sanctioning the appeal to divine judgement in a public forum, instead validated the practice of human investigation and the need to respect the secrecy of what only God can know. "It is not fitting for the faithful mind to surmise that Almighty God wishes the secrets of men to be revealed in the present life by means of hot water or iron... On this account the apostle taught that hidden things were *not to be judged until the Lord comes, who will illuminate the things hidden in the shadows and will make clear the counsels of hearts* (1 Cor. 4–5)... But the usefulness of judgements consists in the discussion of cases and the subtlety of investigations... Thus Daniel, still a boy, when God stirred his spirit, judged the two wicked judges with discriminating subtlety, through which blessed Susannah was saved from unjust condemnation."⁹⁸

Agobard, too, was struggling to make juridical sense of the fact that judgement is often of hidden or unknown things. Despite his disagreement with those who, like Hincmar, supported the ordeal as a valid form of judgement, his argument confirms the commonality of the terms of debate. The same language governs the construction of the

Use in Carolingian Prayerbooks: Alcuin's *Confessio Peccatorum Pura* and the Seven Penitential Psalms," *Mediaeval Studies* 65 (2003): 1–56.

⁹⁸ "Non oportet mentem fidelem suspicari, quod omnipotens Deus occulta hominum in presenti uita per aquam calidam aut ferrum reuelari uelit... Propter quod apostolus praecipit de occultis rebus non iudicandum *quoadusque ueniat Dominus, qui et illuminabit abscondita tenebrarum et manifestabit consilia cordium* (1 Cor. 4–5)... Sed utilitas iudiciorum constat in discussione causarum et subtilitate inuestigationum,... sic et Danihel adhuc puer, suscitante Deo spiritum eius, iudicauit duos iniquos iudices prudenti subtilitate, per quam liberata est et beata Susanna de iniusta damnatione." Agobardus Lugdunensis, *Opera Omnia*, ed. L. Van Acker, Corpus Christianorum Continuatio Mediaevalis [hereafter CCCM] 52 (Turnhout: Brepols, 1981), 25 (*Adversus legem Gundobadi*, capp. 9–10).

meaning of juridical rituals. Both the ordeal and rites of penance share the same judicial premise: that God, and only God, sees into the heart. In one of the more fully documented liturgies for the ordeal, there is a prayer that in its invocation meditates upon this fact: "Omnipotent, eternal God, who are the examiner of the things hidden in hearts, I pray to you, Lord who are the illuminator of all matters, the examiner of hearts and loins and the one who understands thoughts, you who know our secret and concealed hearts and the secrets of our thoughts and also the loins of us all, that you may deign to show forth in the open all doubtful things and uncertain matters, about which we doubt, so that we may be able to observe truth and justice and discern between a lie and the truth..."⁹⁹ The same sentiment lies in Susannah's prayer, quoted by Hincmar in his warnings against the perversion of justice: "O eternal God, who knowest hidden things, who knowest all things before they come to pass, Thou knowest that they have borne false witness against me..."¹⁰⁰

Since it is in the heart where truth is hidden, it is the heart that is the site of judicial decision.¹⁰¹ Different conditions of the heart require different means for discerning the truth. The contrite heart, the heart brought voluntarily to confession and penance, is one that is prepared for healing, and this is the heart that God will not scorn. The obdurate heart identified in the ordeal oaths may have been hardened by God, as was Pharaoh's heart, or, as the oaths seem to favour in explanation, it may be in the power of the devil. Locked fast, it is the heart that has elected not to yield up its secrets to men, even though they are known to God. God may replace this heart of stone with a heart of flesh (Ezekiel 36:26), which will then be malleable and subject to medicinal treatment.¹⁰² All hearts are hidden, however, and that in itself is an aspect

⁹⁹ "Omnipotens, sempiterna Deus, qui es scrutator occultorum cordium, ... Deprecor te, illuminator Domine omnium rerum, scrutator cordium et renum et intellectus cogitationum, qui corda et occulta abditaque et secreta cogitationum et renes omnium nosti et vides, ut ostendere digneris in palam omnia dubia et incertas res, de quibus dubitamus, ut veritatem et iustitiam possimus advertere et inter mendacium et veritatem discernere..." Zeumer, *Formulae*, 612.

¹⁰⁰ Dan. 13:42-43: "*Deus aeterna, qui absconditorum es cognitor, qui nosti omnia, antequam fiant, tu nosti, quoniam falsum testimonium tulerunt adversum me...*" *De divortio*, 173.

¹⁰¹ See Eric Jager, *The Book of the Heart* (Chicago: University of Chicago Press, 2000), 15-17, 23-24, 113-19, 139-46.

¹⁰² Cit. Hincmar, *De divortio*, 113.

of the correctly ordered universe. It is not for men to know all things known to God: the attempt to gain such knowledge was, after all, the cause for the expulsion from the Garden. Men are not bound to reveal all their secrets to other men, nor are they bound to seek medicine at all times. Even in an organism suffering a debility, a cure may come simply through proper care and the grace of God.

Aware that curiosity is a vice, Hincmar's perception was that human investigation into misconduct is not always required, and even though justice is a constant virtue, passing judgement on others should be occasional. Hincmar found biblical warrant for the position that concern over another's sins need not be assumed unconditionally. When Samuel grieved for Saul, because the Lord had cast him down, and the Lord said, "How long will you grieve for Saul?" Hincmar reasoned that there is no sign in the text that the sin for which Samuel grieved had been revealed to anyone except Saul himself; Samuel's grief, however charitable, was not his prerogative.¹⁰³ Patristic counsel indicated to Hincmar that there are often occasions when it is better to bury the knowledge of another's sin in one's breast.¹⁰⁴ Certainly there are conditions that merit human knowledge regarding the truth about someone's actions, as well as cases that require public satisfaction and public resolution of indeterminate criminality. For Hincmar, those conditions and cases required the utmost propriety in procedure, not least because of the grave consequences of an unjust public judgement. Not only the reputation of the accused was in jeopardy but also the pastoral identity of the priest, who might be mistaken for an accuser rather than a guide.¹⁰⁵

The privacy of the heart, however, is the more normal condition allowed to men and women, and it is a condition to be protected from improper intrusions. Not least of the dangers of a breach of the secrecy of the heart is that men will be unable to discern its secrets truthfully and will weave a web of falsehood around the accused. Because they

¹⁰³ "Sed legimus, quia luxit Samuhel Saulem, quoniam abiecit eum dominus, ita, ut dominus diceret ei: *Usquequo tu luges Saul, quoniam ego abieci eum?* Sed non legimus eum cuiquam manifestasse, pro quo illum peccato luxerit, nisi ipsi Sauli, et quantum lacrimae ipsius inde domini auribus intimarunt." *De divortio*, 118.

¹⁰⁴ *De divortio*, 118–19.

¹⁰⁵ "Et dominus in evangelio delinquentem adhibito uno vel duobus praecipit comoneri, ne, quando ad ecclesiam fuerit deferendum, qui monuerat, non corrector, sed deficientibus testibus iudicetur potius criminat." *De divortio*, 119.

are most likely to be preoccupied with the possibility that they cannot see the guilt hidden in the heart, and they want to obtain justice for a crime, they often forget that it may be innocence that is hidden from their sight and that there should be justice for the suspect. Hence the insistence of the ordeal oaths upon the instances of the falsely accused or unjustly punished innocent: the oaths are imprecations that God not allow humans to stray into persecution.

Those administering the ordeal were thus fully aware of its fragility as a channel for justice, for there might be culpability not only on the part of the accused but also on the part of the accusers or witnesses. Proportional to the confidence in divine judgement was weakening faith in human cognisance of truth and justice. For all Hincmar's mining of Susannah's story for technical details of procedure, it can never lose its impact as a story of unjust persecution of the innocent, of the inability of the innocent to defend themselves against malicious abuse of the legal system, of the tragedy of justice denied. The intensity of the issues running through both Susannah's story and probably Theutberga's as well inspired one of the great works of Carolingian art, the Susannah Crystal. An eight-scene illustration of the scriptural text, the Crystal bears the inscription, "Lothar had me made" (*Lothar me fieri fecit*). While art historians have uncovered multivalent resonances to the iconography of the Crystal, the close identification of Susannah with the ritual of the ordeal and the association of the Crystal with Lothar seem to situate it most clearly in the context of Theutberga's ordeal.¹⁰⁶ If so, the Crystal was an enduring and tangible reminder that the cost of trying to discern the truth could be very, very high, especially when the innocent were abused.

¹⁰⁶ On the Crystal and its iconography, see Genevra Kornbluth, "The Seal of Lothar II: Model and Copy," *Francia* 17 (1990): 55–68; Genevra Kornbluth, "The Susanna Crystal of Lothar II: Chastity, the Church, and Royal Justice," *Gesta* 31 (1992): 25–39; Valerie Flint, "Magic and Marriage in Ninth-Century Francia: Lothar, Hincmar—and Susanna," in *The Culture of Christendom: Essays in Medieval History in Commemoration of Denis L.T. Bethell*, ed. Marc Anthony Meyer (London and Rio Grande: Hambledon Press, 1993), 61–74; and Valerie Flint, "Susanna and the Lothar Crystal: A Liturgical Perspective," *Early Medieval Europe* 4 (1995): 61–86. Further discussion and plates are in Genevra Kornbluth, *Engraved Gems of the Carolingian Empire* (University Park: Pennsylvania State University Press, 1995). That even Hincmar is prompted to think of Susannah in the context of the ordeal is established by the other scriptural references in this portion of the *De divortio* text: see pp. 152, 155, p. 173. Given the correspondence, one may even wonder if he was involved in the composition of the ordeal liturgies.

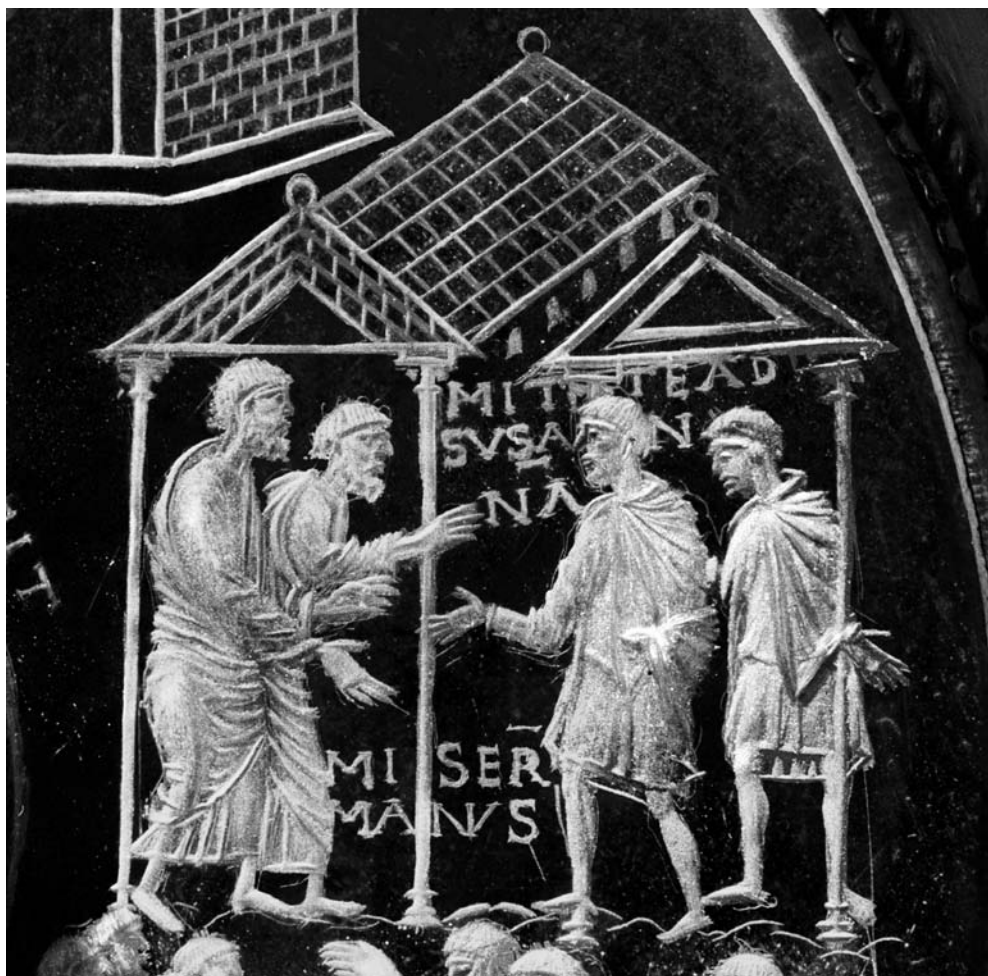


Figure 1. Susanna (Lothar) crystal, reverse, scene 2: Elders summon Susanna. © Genevra Kornbluth.



Figure 2. Susanna (Lothar) crystal, reverse, scene 3: Elders falsely accuse Susanna. © Genevra Kornbluth.



Figure 3. Susanna (Lothar) crystal, reverse, scene 4: Susanna convicted of adultery. © Genevra Kornbluth.



Figure 4. Susanna (Lothar) crystal, reverse, scene 8: Susanna declared innocent by judge.
© Genevra Kornbluth.

In normal times, the best protection for the innocent, then, was secrecy. It was the open and public construction of judgement that imperiled truth. It is only when a thing is told or known that it can be misconstrued, falsified, misunderstood, or concocted. Hincmar had determined that because the truth is hidden, secrets are true. Secrecy guarantees and guards the truth of a confession. Secret penance thus both preserves the truth that is the only redeemable offering to God and also protects the wounded from the savagery of human justice, so that the soul can be healed.¹⁰⁷

The question is whether his desire for judgements based on the purest truth, rather than pragmatic resolutions, had led him to more general reservations about the application of public judicial proceedings. The ordeal, Hincmar maintained, should be implemented infrequently, for only rarely can one importune God for a sign of his knowledge and being: "Do not test the Lord thy God."¹⁰⁸ The alternative to the ordeal, oaths of compurgation, although also in Hincmar's opinion a scripturally sanctioned legal procedure, should likewise be used with the utmost restraint. "It should be cautioned, that the rashness of oath-swearing should be avoided, except when great necessity requires, or service to others, so that they who do not believe the truth will believe, and peace and concord be attained by the oath."¹⁰⁹ Among the scriptural proofs stood the model of Abigail, who persuaded David to replace his sword in its sheath lest he end up grieving for having committed perjury when he swore to kill Nabal.¹¹⁰ Oath-swearing was a short step from violence and perjury; and in its adversarial nature, litigation invited not only potential damage to the dignity and reputation of the participants in a trial, but also danger to their souls.

It was the jurist Hincmar, the man who had been involved in some of the most significant, and also the most bruising, court cases of his time, who counselled wariness in advancing a court case or public judgement. The amount of damage to be done to Christian souls was

¹⁰⁷ Cf. *De divortio*, 176, where Hincmar quotes at length from a decretal of Leo the Great that discusses the fears that enemies will take advantage of a confessant's shame in public confession, and argues for the importance of encouraging those who would confess but do not wish their sins publicised. The text is noted *infra*, pp. 57–58.

¹⁰⁸ Deut. 6:16. Cit. *De divortio*, 160, 162, et *passim*.

¹⁰⁹ "Sed et quantum temeritas iurandi vitari debeat, nisi magna exegerit necessitas aut aliorum, qui non credunt veritati, utilitas, ut credant, et paci ac concordia per sacramentum consulatur, cavenda [*sic*] sit..." *De divortio*, 149.

¹¹⁰ *De divortio*, 150.

potentially great: there were not only the wrongs allegedly done by the accused to be considered but also the wrongs that would perhaps be perpetrated by any number of those participating in the proceedings. So important was it to ensure that the proceedings would be just, that witnesses had to be scrutinised as much as the defendant to determine their moral caliber.¹¹¹ Turning, unusually, to the words of one of his contemporaries to express what even the weight of scriptural witness could not adequately convey, Hincmar reminded his readers that each witness is morally endangered when he asserts the culpability of another. "A certain orthodox and unknown poet has written," he noted,

If you swear in order to commit a crime, let those oaths be worthless:
The one is graver than the other, although each is a wound.
Smaller wounds vex less and greater wounds vex more,
Happy is he who departs injured by no wound.¹¹²

Despite Hincmar's thoughtful and professional elucidation of the procedures for public resolution of criminal cases, in his assessment of the question of whether Theutberga should have been confessed secretly or through a writ, one may perhaps detect a preference for secret penitential proceedings over public ones.¹¹³ In his quotation of a pertinent ruling by Pope Leo the Great, Hincmar extends his argument to encompass the concern that prospective penitents not be discouraged or dissuaded from confessing:

Concerning penance which is sought by the faithful, lest the profession of consciences be published in a written account of every type of sin, let it suffice for it to be indicated in a secret confession to the priests alone. Although indeed the fullness of faith would seem to be laudable,

¹¹¹ Hincmar cites a number of canons to this effect: see *De divortio*, 168–69, 193. On Carolingian interest in examining the moral stature of participants in legal proceedings, see Abigail Firey, "Codices and Contexts: The Many Destinies of the *Capitula Angilramni* and the Challenges of Editing Small Canon Law Collections," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 125:94 (2008): 288–312 (pp. 306–08). On Roman precedent for scrutiny of the moral character of litigants and witnesses, see Harries, *Law and Empire*, 193.

¹¹² Theodulf of Orléans, cit. in *De divortio*, 150: "Si scelus ut facias, iures, vota irrita sunt:/ Hoc ille [leg. illo] est gravior, vulnus utrumque tamen./ Vulnere parva minus, magis et maiora fatigant,/ Felix qui nullo vulnere laesus abit."

¹¹³ Hincmar did prescribe the administration of public penance in his capitulary to priests (Capit. III, c. i): MGH Capit. episc. II, 73–74. My point here is that in the instance of Theutberga, Hincmar, as a jurist making a particular case, considered the proceedings flawed, and that his reasoning was accompanied by profound reflection on the dangers of public penance.

which, out of fear of God, does not fear to blush among men, nevertheless, because the sins of all are not of this sort, so that those seeking penance do not fear to make them known, let this unsanctioned custom [of written confession] be removed, lest many distance themselves from the remedies of penance, since they would either blush or fear that their deeds be disclosed to their enemies, by whom they could be ruined by the constitution of laws. For that confession suffices which is first offered to God, then also to a priest, who may undertake to be one who prays for the sins of those doing penance. Then indeed more will be able to be moved to penance, if the conscience of the one confessing is not publicised to the ears of the people.¹¹⁴

Here again is the notion that secrecy may be better for the soul than open and manifest display, that secrecy may ultimately yield greater candour. This tension between social admiration for transparency and the propensity for humans to move in secrecy pervades medieval texts for centuries after Hincmar's struggles with the problem, at least in part because of the continued juxtaposition of the proposition that secrecy is a proper condition for the sacrament of penance, and the demands of legal systems for public scrutiny.¹¹⁵

What is clear from Theutberga's case is that the judicial procedures available in the 9th century were all vibrant, dynamically intertwined, cross-fertilising, and conflicting. Jurists had inherited a wealth of legal and social traditions that had originated independently, to some extent, and had still not been synthesised and reconciled in rationale.

¹¹⁴ "De poenitentia scilicet, quae a fidelibus postulatur, ne de singulorum peccatorum genere libelli scripto professio publicetur, conscientiarum sufficiat solis sacerdotibus indicari confessione secreta. Quamvis enim plenitudo fidei videatur esse laudabilis, quae propter dei timorem apud homines erubescere non veretur, tamen, quia non omnium huiusmodi sunt peccata, ut ea qui poenitentiam poscunt non timeant publicare, removeatur inprobabilis consuetudo, ne multi a poenitentiae remediis arceantur, dum aut erubescunt aut metuunt inimicis suis sua facta reserari, quibus possint legum constitutione percelli. Sufficit enim illa confessio, quae primum deo offertur, tunc etiam sacerdoti, qui pro delictis poenitentium precator accedat. Tunc enim plures ad poenitentiam poterunt provocari, si populi auribus non publicetur conscientia confitentis." Cit. *De divortio*, 176.

¹¹⁵ For exploration of the range of fields of medieval life after 1215 (including religious confession) in which the discourse of secrecy had an important or central role, see Karma Lochrie, *Covert Operations: The Medieval Uses of Secrecy* (Philadelphia: University of Pennsylvania Press, 1999), a work that explicitly engages Michel Foucault's theories of confession, government, and sexuality. Lochrie's work is especially important for its insistence on the point that a discourse of secrecy generates pressure for disclosure and publicity; hence the importance of confession in a culture permeated with such discourse.

Experimentation produced further inconsistency, along with further precedent. Particular points of tension or contradiction lay in the use of oral and written protocols, the means by which the suspect was brought to justice and to whom, the vicarious exercise of divine prerogative and the desire for mundane control and regulation, the direction of judicial examination toward action, intent, or condition, and the means of discerning truth sufficiently for fair judgement.

The messiness of the actions against Theutberga might seem anomalous, given their context of machinations and intrigue in the court. Royal marriages bring their own punishments. But Hincmar stated explicitly that there must be reflection upon the case because of its import for all. It is also clear that he strove to write not *ad causam* but in a framework of legal precepts and principles that would be applicable in all cases. It appears that at almost every turn, he found those principles compromised or jeopardised, and it would be possible to read *De divortio* as the desperate muttering of a discouraged man facing invincible judicial disarray. By the mid-9th century, Carolingian jurisprudence was a web of procedures and language from Roman law, sometimes torn and sometimes patched with Christian precepts. From unsettled and conflicting views over the religious meaning of confession as a voluntary and sacred communication of things known to God and the legal meaning of confession as a device to advance human judgement came new descriptions of the sanctity of truth and of institutional measures to guard it, not just for pragmatic but also for transcendent reasons. Paradoxically, ecclesiastical pressure for the laity to declare their sins increased the protection in law against efforts to prise secrets from the suspected or accused.¹¹⁶

The debates over Theutberga's confession reflect the deep interest of Carolingian jurists in the spiritual condition of the accused, something that might be considered "private." That interest had consequences for the understanding of remedies in Western law, and also of crime. Not only what the individual did but also what had happened to him or

¹¹⁶ For discussion of the development of the protection of a defendant's secrets in later medieval and early modern law, see R.H. Helmholz, "The Privilege and the *Ius Commune*: The Middle Ages to the Seventeenth Century," in *The Privilege Against Self-Incrimination: Its Origins and Development*, R.H. Helmholz, et al. (Chicago and London: University of Chicago Press, 1997), 17–46. A review of the arguments based on biblical sources and religious precepts as presented by the 12th- and 13th-century jurists is on pp. 26–27.

her, if it had a spiritual effect, might require judicial consideration in order to determine the gravity of the damage and the need for remedy. Among the troubling aspects of Theutberga's case was that the charge eventually laid was that she was raped, and that as the victim, she should undergo public penance, the ritualised but real separation from normal society for the purpose of atonement. Theutberga's crime and punishment have received little regard in modern analyses, because it is quite clear that the prosecution of the case was politically motivated and that hence, it would seem, whatever the charges, their presumed falsity counts as invalidity.¹¹⁷ It is also understood that, since the object of the prosecution was to establish the particular basis for dissolving a marriage, a legal violation of the marital contract would be the best prosecutorial focus. The remedy of monastic sequestration would have the practical advantage of removing the queen from the royal household and bedchamber. These explanations, however, fail to consider sufficiently the rationale that was explicitly stated in the formal description of the charge and verdict provided in the "expanded version": Theutberga was accused of exuding pollution in public, and the crime required purgation.¹¹⁸ Both charge and verdict, although situated in the divorce proceedings, pertained to the public weal. Unlike the civil law of the Roman Empire, under which private individuals prosecuted cases against other private individuals for tangible remedy, the Christianised law of the Carolingians brought public interest to the fore as a cause for legal intervention. This too was a development that tested the definitions of what was considered public and what was considered private. To understand why Theutberga's case could be brought to public adjudication, it is necessary to consider further the significance of the charge that was brought against her and the sentence that was passed upon her.

¹¹⁷ Airlie, "Private Bodies," offers an analysis of the cultural significance of the sexual aspects of the charge and the emotional elements of the verdict within the political framework, without considering the legal or penitential contexts of each.

¹¹⁸ Vide *supra*, pp. 35–36.

CHAPTER TWO

THE PUBLIC WELFARE: POLLUTION AND PURGATION

The tension in law between the private and the public lies not only in the access to the individual granted to public authorities, the subject of the previous chapter, but also in the access to the public granted to the individual, who may, even unconsciously, present danger. This chapter seeks to investigate how religious perspectives on spiritual disorders migrated into legal definitions of public hazards and how religious remedies became incorporated in jurisprudence. As was seen in the case of Theutberga, religious interests had effectively brought to public scrutiny matters that might be considered secret or personal. The charge was that “the grievous pollution of incest was breathed out in public” and, hence, required purgation through public penance.¹ In this charge and remedy are encapsulated some of the Carolingian perspectives on the role of law to protect the public welfare against religious dangers.

Religious dangers are a delicate point in the delineation of public and private. Among the precepts of Western law that most test the bounds of public and private, and that have most been affected by religious influence, are those pertaining to sex and thought. According to Christian doctrine, sex and thought each can compromise the spiritual integrity of the individual. Compounding the danger, a libertine attitude toward the one may produce a similarly libertine attitude toward the other. Law can only go so far to protect the individual against the personal proclivities that jeopardise spiritual health. Indeed, in a Christian culture, law cannot be construed as a constraint of that free will which is the meaningful capacity of the individual to turn to God. Judicial intervention in matters of sex and thought, therefore, is often met with considerable resistance, as these seem to be within the most intimate and private, if also the most religiously coloured, areas of life.

Yet Western laws also treat sex and thought as part of public life. To clarify the perceptions that the suspected culpability of Theutberga was

¹ Vide supra, pp. 35–36.

a matter of public concern, this chapter explores what seem to modern eyes the quaint and sometimes horrifying constructs of religious pollution and purgation that were part of the early medieval discourse about disordered sex and thought and their public impact. Although the rhetoric of pollution and purgation has largely disappeared from modern discourse, it should not be assumed that either the concept of danger to a society's health and well-being from sexual or ideological non-conformity, or an interest in the curative properties of judicial responses have also been discarded.

To understand some of the rationales that undergirded medieval (and perhaps modern) jurisprudence, it is useful to investigate the medieval rhetoric that developed around the concepts of pollution and purgation. Religious ideas about spiritual corruptions and cures entered jurisprudence, and vice versa, through the careful and conscious use of freighted terminology and powerful literary imagery. In that process, the boundaries between law and religion were repeatedly crossed. The commonality of the rhetoric resulted from the fact that juridical and clerical training were, more often than not, combined in the Carolingian period. Bishops were active participants in the formation of imperial legislation and instructed the priests under their direction with language shaped by their own juridical training. The discourse of pollution and purgation was given particular shape by the literacy of clerical jurists. Written discussions of pollution and purgation were a vehicle for transferring ideas outside the traditions of written law into a new, written jurisprudence.

Therein lay another bridge between religion and law. Both Christianity and Western jurisprudence revolve around written texts: Christian faith privileges above all else the Bible and, secondarily, written explications of its meaning; Western laws have as their model the *Corpus Iuris Civilis* and its written derivatives and glosses. Whatever the reverence for the live performance of trials and liturgies, for the importance of oral argument and preaching, and for the role of memory in transmitting precedent and belief, written texts have special authority. They are held as (or aspire to be) definitive articulations of lasting precepts. Their fixity is, of course, deceptive. Neither religion nor law is static.

Interpretation of religious and legal precepts, as well as the incorporation of additional beliefs, takes place also outside the texts, in the world of social conventions and consensus. A foray into the early medieval constructs of pollution and purgation shows how the Christianisation of law was contingent upon the co-ordination of unwritten belief and

written texts. Without the support or integration of social norms, written texts become arid. One of the central questions of this chapter, therefore, is what transpired outside the textual representation of law that gave it meaning and force. This chapter shows how tacit religious beliefs, by their entry into Carolingian written discourse, shaped ideas both about the use of law to protect the public and also the use of purgation as a legal remedy.

Tacit law: The mouse in the soup

If a mouse falls into the soup, it shall be taken thence, and [the soup] shall be sprinkled with holy water, and if the mouse is living, the soup may be eaten, but indeed, if it be dead, all the soup shall be cast outside and should not be given to a person, and the vessel shall be cleaned.

Again, if that liquid in which a mouse or weasel is submerged and dies contains much food, it shall be purged and sprinkled with holy water and taken if there is need.

If, without knowing it, one eats what is polluted by blood or any unclean thing, it is nothing; but if he knows, he shall do penance according to the degree of pollution.²

One of the surprising aspects of Lothar's effort to divorce Theutberga is that it ultimately rested on the application of legal and penitential traditions relating to pollution that, in a refracted form, are evident in the text cited above. While the mouse's fall into the soup hardly seems worthy of juridical examination, it did apparently merit written regulation (as well as commemoration in quite a few extant manuscripts), and it raises the question of the extent to which pollution was formally a matter for legal or penitential action. While Hincmar queried many aspects of the proceedings, he did not challenge the suppositions that

² "Surrex si ceciderit in liquorem, tollatur inde et aspargatur aqua sancta et sumatur si vivens sit, si vero mortua, omnis liquor projiciatur foras nec homini detur, et munitur vas. Item alias. Si multus sit cibus ille liquidus, in quo mus mustelave immersa moritur, purgetur et aspargatur aqua sancta et sumatur si necessitas sit... Quod sanguine vel quocunque immundo polluitur, si nescit, qui manducat, nihil est, si autem scit, poeniteat iuxta modum pollutionis." "Poenitentiale Theodori," in Hermann (F.W.H.) Wasserschleben, *Die Bußordnungen der abendländischen Kirche* (Graz: Akademische Druck- u. Verlagsanstalt, 1851; repr. 1958), 192. See Appendix A for variant readings in other texts that cite the canon. The question of whether it be the mouse or the soup that may be eaten is addressed in John Thomas McNeill and Helena M. Gamer, *Medieval Handbooks of Penance* (New York: Columbia University Press, 1938), 191 n. 76: "That is, apparently the liquid, though grammatically the mouse."

someone might become polluted by sex, and that such pollution might endanger a community, unless purged.³

The world of ritual pollutions and purgations, although rejected in legal positivism as irrational, created for Carolingians a juridical space for negotiating the ambiguities inherent in most human conflicts. Rules of ritual pollution may prove more useful than normal juridical rules in resolving social disturbances when it is not possible to identify anyone's intention, knowledge, or choice. A pronouncement of ritual pollution can clarify that a condition not defined in statutory law as criminal or even morally reprehensible is nonetheless problematic. Identification of pollutions could also provide for the distribution of remedies in ways that might not match juridical decisions obtained through dialectical reasoning, and could allow judges to recognise unspecified wounds incurred by either the plaintiff or defendant, or both. In this, the workings of pollution systems differ from those of statutory law. The intent in legal prosecutions is to resolve ambiguities of liability or culpability in favour of one party or another. In contrast, pollution systems locate liability in the shadows, allowing those adjudicating to adjust the descriptions of the damage and recompense as ambiguously as the social, emotional, and moral situation warrants. While assignment of pollution may at times seem an abhorrent permission to blame the victim or to persecute the innocent, in a world in which guilt is rarely located in a single act and innocence is hard to come by and easily lost, the metaphysics of pollution and purgation supply a scheme for understanding justice in ways that prosecutions relying upon physical forensics do not.

Or so the theory goes. An intriguing feature of Carolingian jurisprudence is that it seems to capture a moment when the covert rules of religious pollution and purgation entered the texts of learned law and produced a rationale for the prosecution of offenses previously undefined, or only weakly represented in existing law. The incorporation of a religious discourse of pollution into juridical discourse had special implications for potential prosecutions in the areas of sex, thought,

³ A strong precedent, noteworthy for the closeness of its parallels, had been established in the case of Lothar's stepmother Judith, who was accused of incestuous adultery and consigned to monastic residence for penitential purgation. Recent discussion of the episode and the dangers of royal contamination is in Mayke de Jong, "Exegesis for an Empress," in *Medieval Transformations: Texts, Powers, and Gifts in Context*, ed. Esther Cohen and Mayke de Jong (Leiden: Brill Academic Publishers, 2001), 79–85, 94–96.

belief, or identity, and also for the perception of remedies. The career of the mouse who fell into the soup exemplifies the entry of religious dangers into the highly rationalised analysis of texts practiced by jurists trained in Roman law and scriptural exegesis.

Despite his high legal profile, the mouse has, until recently, been neglected in the scholarly literature on medieval law.⁴ A number of texts that seemed to represent peculiar legal perspectives, made up of canons such as that describing the mouse in the soup and designated “penitentials,” were understood to constitute the precursors of later confessor’s manuals and thus slid into the domain of “pastoral care” rather than legal discourse.⁵ Scholars seeking the origins of the practices of Christian confession and penance promoted the idea that the “penitentials” were “little handbooks” to be used by priests in the (private) pastoral care of their flocks, despite the manuscript evidence that few of these texts circulated as “little handbooks” and the textual evidence that they seem more closely associated with either monastic communities or bishops.⁶

⁴ The dietary prescriptions of the penitentials and the constructs of pollution and purity in which they are to be situated are discussed in Rob Meens, “Pollution in the Early Middle Ages: The Case of the Food Regulations in Penitentials,” *Early Medieval Europe* 4.1 (1995): 3–19; Hubertus Lutterbach, “Die Speisegesetzgebung in den mittelalterlichen Bußbüchern (600–1200): Religionsgeschichtliche Perspektiven,” *Archiv für Kulturgeschichte* 80 (1998): 1–37; Raffaele Savigni, “Purità rituale e ridefinizione del sacro nella cultura carolingia: L’interpretazione del *Levitico* e dell’*Epistola agli Ebrei*,” *Annali di Storia Dell’esegesi* 13 (1996): 229–55. See also Albert Demyttenaere, “The Cleric, Women and the Stain: Some Beliefs and Ritual Practices Concerning Women in the Early Middle Ages,” in *Frauen in Spätantike und Mittelalter: Lebensbedingungen—Lebensnormen—Lebensformen. Beiträge zu einer internationalen Tagung am Fachbereich Geschichtswissenschaften der Freien Universität Berlin 18. bis 21. Februar 1987*. Ed. Werner Affeldt (Sigmaringen: J. Thorbecke, 1990), 141–65, and additional discussion at pp. 167–72. Demyttenaere discusses the case of the mouse on pp. 148–50.

⁵ Cyrille Vogel, “Les rituels de la pénitence tarifée,” in *En rémission des péchés: Recherches sur les systèmes pénitentiels dans l’Eglise latine*, ed. Alexandre Faivre (Aldershot, Hampshire Brookfield, VT: Variorum Ashgate Pub. Co., 1994), 426; and Vogel, “Composition légale et commutations dans le système de la pénitence tarifée,” 356, with a note to the earlier literature, in the same collection.

⁶ Nuanced discussion of the institutional contexts in which some penitentials may be situated is in Ludger Körntgen, *Studien zu den Quellen der frühmittelalterlichen Bussbücher*, Quellen und Forschungen zum Recht im Mittelalter (Sigmaringen: J. Thorbecke, 1993), 64–72, 76–80, 160–68. The premise of a monastic context guides Allen J. Frantzen, *The Literature of Penance in Anglo-Saxon England* (New Brunswick, NJ: Rutgers University Press, 1983), 19–60. See, however, the important reservations expressed by Hamilton, *Practice of Penance*, 88. Readings of the penitentials have also been affected by the competing analyses of penance as a “judicial weapon” or a “pastoral practice,” a dispute noted by Hamilton, *Practice of Penance*, 21. For recent

In the narrative of canon law history, the penitentials were castigated as “private” law, without authority or sanction, to distinguish them from law that was intellectually and politically more acceptable to Renaissance scholars: a law that was Roman in form, and in origin and sanction—a law that could be argued to have emanated long ago from Rome, and from St. Peter’s in Rome⁷ (and which did not discuss mice). This scholarly preference for recognisably Roman canon law was subsequently pressed into the service of later nationalistically shaped histories that also emphasised the contrast between promulgated and “private” law. The most influential, indeed, to date the only narrative history of canon law before Gratian, *L’histoire des collections canoniques en occident* of Fournier and Le Bras, casts the penitentials not only as a foil to superior Roman traditions but also as emblems of vile Celtic contamination threatening the purity of Gallic legal discipline.⁸ The

discussions of whether the penitentials were primarily for use in episcopal sees or parish churches, see the arguments of Franz Kerff, “*Libri paenitentiales* und kirchliche Strafgerichtsbarkeit bis zum Decretum Gratiani: Ein Diskussionsversuch,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 75 (1989): 23–57; and Rob Meens, “The Frequency and Nature of Early Medieval Penance,” in *Handling Sin*, ed. Peter Biller and Alastair Minnis (Woodbridge: Boydell and Brewer, 1998), 35–61. On the codicological evidence, see Allen J. Frantzen, “The Tradition of Penitentials in Anglo-Saxon England,” *Anglo-Saxon England* (1983): 26, where he finds two possible “handbooks,” bound in larger codices, but concludes from the size and format of the extant penitentials that they were episcopal texts to be used for copying and distribution to smaller churches.

⁷ The prime impetus for historical criticism of canon law texts was the work of the *Correctores Romani*, the papal commission appointed in 1566 to establish the text of the *Corpus Iuris Canonici*; see August Theiner, *Disquisitiones Criticae in praecipuas canonum et decretalium collectiones seu Sylloges Gallandianae dissertationum de vetustis canonum collectionibus continuatio* (Rome, 1836), v–xxi, and his *Appendix prima: Documenta quae Gratiani Decreti emendationem respiciunt*, (1)–37. A summary of Theiner’s findings and reproductions of some of his documents are in Emil A. von Friedberg, ed., *Corpus Iuris Canonici*, 2 vols. (Leipzig, 1879–81; repr. Graz: Akademische druck- u. Verlagsanstalt, 1959), “Prolegomena: De editionibus Decreti Gratiani,” lxxvi–xc. In their description of the antecedents of Gratian, the *Correctores* privileged the *Collectio Dionysio-Hadriana*, which they called the *Codex canonum*, in contrast to which were the texts compiled by “private collectors” (*ceterum inter privatos collectores*) of the early Middle Ages (Friedberg, col. lxxxiii). This classification of early medieval canon law texts as “private” provided the essential framework of historical analysis developed by Pietro and Girolamo Ballerini, *De antiquis tum editis, tum ineditis collectionibus et collectoribus canonum ad Gratianum usque tractatus in quatuor partes distributus*, in *Appendix ad sancti Leonis Magni opera III* (1757), repr. J.-P. Migne, *Patrologiae cursus completus: Series latina* (Paris, 1844) [hereafter PL], 56, cols. 11–354, the influence of which still governs accounts of early medieval canon law.

⁸ Paul Fournier and Gabriel Le Bras, *Histoire des collections canoniques en Occident depuis les Fausses décrétales jusqu’au Décret de Gratien*, 2 vols. (Aalen: Scientia Verlag, 1932; repr. 1972), 1:50–65, 73–75, 84–91, 98–100, et passim. Commitment to the

vehemence of the rhetoric in this work is startling: the penitentials are a “contagion,” a “peril,” that threatened to reduce the Gallic church to “anarchy.” The vivid narrative culminates in a chapter heading, capitalised, “LA LUTTE CONTRE LES PENITENTIALES INSULAIRES.” Irish historians, finding their ancestors credited with such remarkable texts, turned the narrative to good account and maintained that these texts were proof of a distinctive Celtic Christianity that had developed independently of Roman influence (and, perhaps, corruption).⁹ In scholarly descriptions, the penitentials were “private” in two senses: they were used in the private relation between sinner and confessor, and they were not publicly established legal instruments.

The general import of such analysis has been to conjure up the image of a primitive, even defective, legal environment of the early Middle Ages. A somewhat different perspective on “private law” may help to situate the penitentials in the matrix of laws that, just as in other legally rich societies, in the early Middle Ages co-existed, conflicted, and had mutual impact. Private law is currently gaining recognition as a potent force present even in legally sophisticated cultures in which the state is the primary judicial agent. In the wake of interest in legal anthropology, scholars have directed attention to the capacity of communities to express rules and judgement, sometimes as an alternative to the institutions of the state, and sometimes as a portal to those institutions.¹⁰

allegedly Celtic origins of the penitentials has had a profound effect on scholarship. Hermann Wasserschleben was so influenced by this presumption that when editing the “Poenitentiale Theodori,” he expanded the standard abbreviation for *sanctorum* (scorum with a suspension mark) in the phrase “Ista testimonia sunt de eo, quod in praefatione diximus de libello (abbrev.: scorum)...” to read “Scottorum.” Wasserschleben, *Die Bußordnungen*, 191.

⁹ Cf. John T. McNeill, *The Celtic Penitentials and Their Influence on Continental Christianity* (Paris, 1923) for the transmission of these ideas into American scholarship.

¹⁰ The importance of such “private organisations” is discussed in Walter O. Weyrauch, ed., *Gypsy Law: Romani Legal Traditions and Culture* (Berkeley, Los Angeles, London: University of California Press, 2001), 13–15. Stimulus for such modes of analysis was Sally Falk Moore, *Law as Process: An Anthropological Approach* (London: Routledge & Kegan Paul, 1978); an excellent survey of subsequent historiographic tendencies in the scholarship of medieval law is provided by Warren C. Brown and Piotr Górecki, “What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970–2000,” in *Conflict in Medieval Europe: Changing Perspectives on Society and Culture*, ed. Warren C. Brown and Piotr Górecki (Aldershot and Burlington, VT: Ashgate, 2003), 1–35. Emphasis on the social constructs and informal strategies that frame the use of formal legal prescriptions, processes, and institutions is especially prominent in recent studies of later medieval and early modern law, e.g., Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca and London: Cornell University Press, 2003); Paul Hyams, *Rancor*

There can be, then, in any society, a multiplicity of legal systems, with different and fluctuating degrees of formality and autonomy. While this situation has long been accepted as normative in the later Middle Ages, when towns, universities, guilds, kings, counts, manors, bishops, and the pope each had their own jurisdictions and applicable law, the early Middle Ages, lacking such prominent institutions or powers, have until recently been reduced in much scholarship to a simple, even impoverished, legal environment.¹¹ Scholars have used the word *private* to refer to justice rather than to law, citing the practices of blood-feud, wergeld, compurgation, and the ordeal: these methods of dispute resolution, it is held, entail the action or negotiation of (private) individuals, rather than the intervention or mediation of an institution with legal jurisdiction.

Recent research on private law both accords it greater impact and also broadens the definition of “law” considerably, and proposes that neither institutional authority nor textual authority are the exclusive measures for defining “law.” Social codes, the often unwritten rules that shape our lives, may be considered a form of law. Furthermore, it appears that the covert forms of such rules, codes, or enforced customs tend to exercise greater sway than the written laws of a public authority.¹² “Public,” written law must accord with the unwritten “private” laws in effect if it is to be accepted and enforced. Lawyers who argue from the letter of the public law are in a much weaker position than lawyers who argue, subtly, from the spirit of community standards, that is, from the systems of “private law.”¹³ Private law, then, is always

and Reconciliation in Medieval England (Ithaca and London: Cornell University Press, 2003); and Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987). The varying use of informal, unwritten norms and learned law in the Carolingian period is explored by Warren C. Brown, “The Use of Norms in Disputes in Early Medieval Bavaria,” *Viator* 30 (1999): 15–40.

¹¹ Cf., e.g., Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), 76–77; and Mario Bellomo, *The Common Legal Past of Europe, 1000–1800*, trans. Lydia G. Cochrane, Studies in Medieval and Early Modern Canon Law (Washington, DC: Catholic University of America Press, 1995), who entitles his chapter on the early Middle Ages “*Per pugnam sine iustitia*: An Age without Jurists.”

¹² Brown, “Use of Norms,” pp. 25, 38, and 39, observes that the norms represented in the written Bavarian Law did not play “a dominant and decisive role in property disputes, either on a procedural or on a substantive level,” although the written norms of canon law did govern the outcome of one dispute he studied.

¹³ Walter O. Weyrauch and Maureen Anne Bell, “Autonomous Lawmaking: The

shaping public law; it is, in a sense, more public than the laws drawn up by a small body of legislators and jurists, or at least more popular. The penitentials appear to bear the imprint of such tacit rules in their purity laws, and the very peculiarities that caused modern scholars to isolate them from properly juridical traditions can help to illuminate some of the social contexts that influenced written law.

In their attention to pollution and the rituals for its expiation, the penitentials parallel the model of Old Testament sacral regulations. While modern scholars have chosen to focus on the sexual prohibitions contained in the medieval penitential texts as being of the greatest interest to a modern audience, it is important to remember that those rules are situated in the context of what are essentially purity laws.¹⁴ Complementing the specifications of sexual pollution are the canons concerned with dietary prescriptions that appear to be either derived directly from the texts of Leviticus, Numbers, and Deuteronomy or are logical extensions of those texts. This is where we find our mouse: he is the mouse or weasel (*mus*, *mustela*) of Leviticus 11:29–35:¹⁵

And these are counted as unclean to you among the things that swarm upon the earth: the weasel, the mouse, and the crocodile, each according to its kind... And anything upon which any of them falls when they are dead shall be unclean... And if any of them falls into any earthen vessel, all that is in it shall be unclean, and you shall break it. Any food in it which may be eaten, upon which water may come, shall be unclean; and all drink which may be drunk from every such vessel shall be unclean.

Our mouse has a sacral identity: he is Unclean. It is to be stressed that he is not merely unhygienic; his pollution is ritual and religious.¹⁶ But

Case of the 'Gypsies,' in Weyrauch, *Gypsy Law*, 11–87 (17–18). Cf. Brown, "Use of Norms," 20.

¹⁴ Cf. Lutterbach, "Speisegesetzgebung"; Savigni, "Purità Rituale"; Meens, "Pollution"; Demyttenaere, "The Cleric, Women and the Stain."

¹⁵ Lev. 11:29: "Haec quoque inter polluta reputabuntur de his quae moventur in terra, mustela et mus et crocodilus, singula iuxta genus suum..."

¹⁶ The classic study of ritual pollution is that of Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (New York: Praeger, 1966). In the 2002 edition, Douglas devoted three pages of her new introduction to considerable recantation of her original analysis of the Levitical animals (xiii–xvi), an analysis which Meens, "Pollution in the Early Middle Ages," followed closely. A convenient survey of the explanations offered for what Douglas called "the hoary old puzzle" (2002 ed., p. 51) of the Levitical abominations, including those of Douglas and her critics, is in Walter Houston, *Purity and Monotheism: Clean and Unclean Animals in Biblical Law*, Journal for the Study of the Old Testament Supplement Series 140 (Sheffield: Sheffield Academic Press, 1993), 68–123. In the absence of any comprehensive (or even partial)

did this Levitical mouse correlate to the real mice of the early Middle Ages, and if so, how? It will be argued below that to some degree the discussions in the penitentials of unclean circumstances should be likened to the hypothetical cases, often odd to the point of absurdity, proposed by jurists to test principles.¹⁷ One of the central issues, then, in trying to understand the role of pollution as a condition requiring pastoral or juridical intervention is to grasp better how the chasms between tacit religious beliefs and learned legal or paralegal texts were bridged or circumvented, both in diagnosis of offenses and the application of remedies.

The very use of the word *pollution* in the sources to describe some of the conditions that required penitential remedy suggests that the issue was one of public import. Pollutions spread, they are contagious, they may contaminate the innocent.¹⁸ The sources of pollution were, however, often apparently acts which to modern readers seem clearly “private” or “secret”; when defined as public, they make the “Carolingian dichotomy” (“public sin, public penance; secret sin, secret penance”) perplexing.¹⁹ Determining the public or secret status of an offense is further complicated by incongruity in the texts that would have guided early medieval readers in their negotiation of penitential and legal remedies: the canon law of the late antique synods and papal rescripts

ethnography of Carolingian society, rather than attempting any extensive analysis of the symbolic systems of ritual pollution in operation, the intent of the present study is to focus primarily on the juridical consequences of their representation in written texts.

¹⁷ The suggestion that these odd penitential canons were juridical exercises was put forward by Nora K. Chadwick, *The Age of the Saints in the Early Celtic Church* (London and New York: Oxford University Press, 1961), 149; and also by Ludwig Bieler, *The Irish Penitentials*, *Scriptores Latini Hiberniae* (Dublin: Dublin Institute for Advanced Studies, 1963), 339. Their views are rejected as unsubstantiated by Pierre Payer, *Sex and the Penitentials: The Development of a Sexual Code, 550–1150* (Toronto: University of Toronto Press, 1984), 13, who prefers to interpret the canons as true reflections of real situations and activities. It seems likely that the texts range across possibilities both familiar and improbable, and also were both applied and purely academic. Some evidence for the study of learned law in early medieval Francia is to be found in Ian Wood, “Administration, Law and Culture in Merovingian Gaul,” in *The Uses of Literacy in Early Medieval Europe*, ed. Rosamond McKitterick (Cambridge: Cambridge University Press, 1990), 63–81 (67); Janet Nelson, “Literacy in Carolingian Government,” in the same volume, 258–96 (271–72). Anna A. Grotans, *Reading in Medieval St. Gall* (Cambridge: Cambridge University Press, 2006), has fascinating evidence for formal rhetorical training, essential in juridical aptitude, in the early 11th century (pp. 89–91) and notes Alcuin’s references to the role of rhetoric in litigation (p. 89).

¹⁸ Robert Parker, *Miasma: Pollution and Purification in Early Greek Religion* (Oxford: Clarendon Press, 1983), 9–10, 16–17.

¹⁹ On the “Carolingian dichotomy,” vide *infra*, pp. 157, 211–212.

(decretals) did not, for the most part, conceive of pollution as a problem to be addressed. Its reality as a social construct was, however, presented to early medieval clerics in some of the most widely read and generally authoritative literature available to them: the penitentials that were to be in the equipment of every church, according to some sources.²⁰

The discourse of pollution: Pathologies and mutations

The extant penitentials that detail polluting circumstances raise a number of problems with respect to their composition and implementation. While it is tempting to consider each penitential text as in some way unique, reflective of the ideals of an individual “author” and intended as a code for a particular community, it is useful to recall that in fact the texts draw from a common corpus of written prescriptions, and in their collectivity they reflect a common training and familiarity with a learned law. The dietary prohibitions, attested in manuscripts from Spain, across Francia, Italy, and England, most from the 8th, 9th, and 10th centuries, are evidence that the penitential corpus was widely disseminated and apparently tended to retain a standard form, reproduced by a number of trained scholars.²¹ Despite the seeming plethora of quasi-Levitical penitential canons regarding diet, the range of subject matter and textual variation in its description is actually quite limited. There are canons regarding the impurity of dead things given to pigs, pigs which have tasted blood, animals savaged by wolves

²⁰ Cf. Arnold Angenendt, “Libelli bene correcti. Der ‘richtige Kult’ als ein Motiv der karolingischen Reform,” in *Das Buch als magisches und als Repräsentationsobjekt*, ed. Peter Ganz (Wiesbaden: Otto Harrassowitz, 1992), 128–29. Review of the sources stating that a priest must own and use these texts is given by Allen J. Frantzen, “The Significance of the Frankish Penitentials,” *Journal of Ecclesiastical History* 30 (1979): 412–13.

²¹ A recent estimate is that there are extant at least 300 manuscripts containing penitentials that date from before A.D. 1000: Hamilton, *Practice of Penance*, 44. The replication of penitential canons has been noted by Payer, *Sex and the Penitentials*, 11–12, who, like the editors of the canons and many other scholars, presumes that this indicates that later penitentials drew from earlier ones. Payer states, however, that direct transmission is not to be deduced from his references to other texts. To press the point further: it may be more useful to treat these canons as drawn from a pool of possibly both written and memorised texts. Cf. Abigail Firey, “Ghostly Recensions in Early Medieval Canon Law: The Problem of the *Collectio Dacheriana* and Its Shades,” *Tijdschrift voor rechtsgeschiedenis/Revue d’histoire du droit/Legal History Review* 68 (2000): 81–82.

or dogs, harts or goats found dead, animals contaminated by human intercourse, murderous bees, strangled things, the mouse in the soup (with an addendum stipulating different conditions if there was much soup), bird in the soup, mice found in other food, and the status of fish, rabbit, and horsemeat. With respect to those consuming questionable food, there are canons treating those who eat unclean meat or carrion, those who eat it unwittingly, the dietary needs of the infirm, and the problem of transmission by touch. Once the texts of these canons are collated from the various penitentials in which they appear in printed editions, it is evident that there are few variant readings and that only a few distinct versions may be discerned.²² The canons are textually consistent in ways that would result from recourse to a common, written corpus. Whatever their history, they appear to have been widely used in the intellectual preparation of a class of Carolingian clerics.

As one might expect in canons that reflect juridical training, there are the eruptions of debate and contrary interpretation of fine, even arcane, points. Fairly lively argument seems to have ensued over whether it was permissible to eat pigs (or hens) that have tasted blood. Distinctions revolved around whether the pig had merely touched another creature that had consumed blood, or had itself eaten carrion or drunk blood. Even then, one school held that after time and purification, the pig might be eaten, but another school seems to have considered the prohibition against eating pig that had tasted human flesh and blood absolute.²³ The

²² See Appendix A, where the canons printed in Wasserschleben, *Die Bußordnungen*, under the rubrics *Canones Gregorii*, *Capitula Dacheriana*, *Conferences Ps.-Egbert*, *Penitentiales Theodori*, *Poenitentiales Ps.-Egbert*, *Poenitentiales Ps.-Bedae*, and *Poenitentiales Bedae* are collated. The canons of the *Canones Hibernenses* appear to be anomalous. Further work needs to be done to collate these materials with those printed in Hermann Joseph Schmitz, *Die Bussbücher und die Bussdisciplin der Kirche nach handschriftlichen Quellen dargestellt* (Graz: Akademische Druck- u. Verlagsanstalt, 1958); Francis Bezler, *Les pénitentiels espagnols: Contribution à l'étude de la civilisation de l'Espagne chrétienne du haut moyen âge*, *Spanische Forschungen der Görresgesellschaft* (Münster: Aschendorff, 1994); Ludger Körntgen and Francis Bezler, eds., *Paenitalia Hispaniae*, *Corpus Christianorum, Series Latina* [hereafter CCSL] (Turnhout: Brepols, 1998); Bieler, *The Irish Penitentials*; and the *Paenitalia minora Franciae et Italiae saeculi VIII-IX*, ed. Ludger Körntgen, Ulrike Spengler-Reffgen, and Raymund Kottje, CCSL (Turnhout: Brepols, 1994).

²³ "Pigs which have touched things tasting blood may be eaten. If, however, pigs eat things that have torn the corpses of dead things, it is not permitted to eat their meat, until they are marinated [?] and after the passage of a year" [Porci qui sanguinem gustantes tetigerint, manducantur. Si vero porci cadavera mortuorum lacerantes manducant, carnem eorum manducare non licet, usque dum macerantur et post circulum anni]. Wasserschleben, *Die Bußordnungen*, 147, 175, 212. "If pigs eat the flesh of carrion or

question of the hens required analogy to the pigs: "if in the case that pigs ate the flesh of carrion or the blood of a man we believe they are not to be thrown out, then neither should be hens."²⁴ The proponent of this view, however, recognised that the legal premises for making the analogy were less than secure: "if a hen has drunk human blood, after three months it is permitted to eat it; although admittedly we do not have established testimony on this point."²⁵

The debate over the pigs and the hens seems evidence of jurists at play, engaged in the rarified parsing of distinctions that are part of the essential training of the legal mind; it also illuminates a system of implicit or covert rules. In their almost casuistical form, the penitential canons are redolent of learned law. Yet their failure to address explicitly the core rules of pollution suggests that they should be read in the context of authentic and operative pollution taboos. If a characteristic of such taboos is that they are not formally prescribed, but are rather tacitly conveyed, then the very indirectness of their representation in the penitentials may suggest that these are not ossified conventions but live possibilities.²⁶ The pollution should not have to be explained to the audience, although the correctness of the response may be discussed at length. It seems not to have been the category of creature that was the central object of concern but, rather, whether the creature had been in dangerous contact with carrion or human blood, and whether

have tasted human blood, we do not believe they are to be cast away, even if it is not yet permitted to eat them, until they are clean..." [Si porci carnem morticinam ederint vel sanguinem humanum gustaverint, non abjiciendos esse credimus, tametsi nondum licebit eos comedere, donec mundi sint.] Wasserscheleben, *Die Bußordnungen*, 317.

²⁴ "Tamen si casu porci comederint carnem morticinorum aut sanguinem hominis, non adjiciendo credimus, nec gallinas equali modo." Wasserscheleben, *Die Bußordnungen*, 147, 175, 212.

²⁵ "Si gallina sanguinem humanum biberit, post tres menses licebit eam comedere; verumtamen de hoc non habemus vetus testimonium." Wasserscheleben, *Die Bußordnungen*, 317. Pigs and hens also attracted the attention of 9th-century Muslim jurists in al-Andalus and North Africa: see Janina M. Safran, "Rules of Purity and Confessional Boundaries: Maliki Debates About the Pollution of the Christian," *History of Religions* 42 (2003): 197–212 (204).

²⁶ The Levitical rules are the only written pollution system treated by Douglas: her many other sets of data come from anthropological reports of observation and analysis. Safran, "Rules of Purity," states that in producing written analyses of purity rules, Muslim jurists "participated in, and had as an objective, the framing, adapting, rationalizing, and upholding of the coherence of the developing legal system" but notes Norman Calder's view that Qu'ranic norms entered the domain of juristic speculation at a later stage of development. Safran also comments that the juridical opinions derived, "on some level, from social reality: juridical opinions and debates contended with social practice and reflected concerns of social control" (p. 199).

it might transmit corpse pollution or blood pollution. It is noteworthy that the dietary canons usually precede or follow sections examining the purification of women after childbirth or handling of the dead in burial. This deeper principle that danger resides in the dead or bloody holds for each of the dietary prohibitions. The problem when a mouse falls into beer (as many of the texts have it) is not that it is a mouse but that it might be dead when extracted. The problem with bees that kill a man is that they might transmit corpse pollution to their honey; hence they must be killed quickly so that they do not spend a night in their hive.²⁷ The problem with deer or goats ravaged by foxes or other wild beasts lies not with the ravaging creature but, instead, that unless killed freshly by a hunter, the flesh is corpse or carrion, rather than meat. Semi-cooked food may contain “blood-stained” matter of indeterminate religious purity, but what of bloodless creatures who live in cleansing waters, such as fish?²⁸

The Levitical cast of these canons, then, is to a large extent a literary affectation. The canons are not reformulations of Levitical prescriptions but reflect seemingly authentic pollution concerns that have been articulated with quasi-biblical language.²⁹ This would explain why extensive portions of the Levitical and Deuteronomic regulations, such as those regarding the presence of mold on walls or corruptions of the skin, are wholly omitted from the early medieval penitentials. The apparently erratic extrapolations of clean and unclean dietary material from

²⁷ “Apes si occiderint hominem, statim occidantur, antequam ad mel perveniant, ita saltem, ut non per noctem ibi restent, et mel, quod fecerint, comedatur.” Wassersleben, *Die Bußordnungen*, 316. Cf. Lutterbach, “Speisegesetzgebung,” 4. The salience of the fact that it is dead bodies that pollute in the Levitical scheme is noted by Houston, *Purity and Monotheism*, 51–53.

²⁸ “Fish, moreover, are permitted as food, even if they are found dead, because they are of a different nature” [Pisces autem licent, quia alterius naturae sunt]: Can. Dach. (Wasserschleben, p. 147); Can. Greg. (Wasserschleben, p. 176); Theod. (Wasserschleben, p. 212); and Ps-Egbert (Wasserschleben, p. 315). “If someone finds a dead fish in a pool and eats it, let him fast for four weeks on Wednesdays and Fridays on bread and water, and on the other days let him abstain from meat; but if a fish is found dead in a stream, it may be eaten” [Si quis piscem mortuum in piscina invenerit, et eum ederit, iv hebdomadas, diebus Mercurii et Veneris in pane et aqua, jejundet, et aliis diebus a carne se absteineat; at si in flumine piscis mortuus inventus sit, edatur.] Poen. Ps.-Egbert (Wasserschleben, p. 337).

²⁹ Lutterbach, “Speisegesetzgebung,” 29. On the use of biblical models, rationales, and rhetoric in the formulation of law in the period when the penitentials were copied, see Wilfried Hartmann, “Die karolingische Reform und die Bibel,” *Annuario Historiae Conciliorum* 18 (1986): 58–74.

Levitical precedents are, in fact, not erratic: they are not extrapolations but, rather, form a matrix of different concerns, centred not around the categories of creatures but around the type of pollution.³⁰

Another distinction between the penitential and Levitical representation of polluting situations is that the early medieval jurists appear to be testing the course of responsibility and liability with principles inculcated, perhaps, by familiarity with Roman law. The directness of the action or physical contact is a crucial issue: did the implicated party actually touch directly, or merely touch another who touched? Does the interval of time elapsed since the death in some way affect the assessment of guilt or corruption?³¹ Was the pollution incurred knowingly or unknowingly?³² This last was a particularly vexing issue, it seems, for the jurists, who were caught between the inherent operations of pollution, which can touch the innocent, and rational systems of law that rested to some extent upon determination of awareness in order to distinguish between the liabilities for accident and for crime. The application of rationality is also evident in the stipulation that necessity is a wholly mitigating factor: the necessity of the hungry or the infirm overcomes in all cases, it seems, the danger of pollution.³³ This gives a

³⁰ Lutterbach, "Speisegesetzgebung," 2–15.

³¹ "If a hen has drunk human blood, after three months it is permitted to eat it"; "If there is a man who has struck a wild beast with an arrow and therefore chases it and it is found dead after the third day and there a dog or a wolf or a vulture or a bear or whatever sort of other wild thing has been busy with it, let the man who is Christian not taste it." Wasserschleben, *Die Bußordnungen*, 317, 337.

³² Hubertus Lutterbach, "Intentions- oder Tathaftung? Das Bußverständnis in den mittelalterlichen Bußbüchern," *Frühmittelalterliche Studien* 29 (1995): 120–43 (137). A response to Lutterbach's article is Raymund Kottje, "Intentions- oder Tathaftung? Zum Verständnis der frühmittelalterlich Bußbücher," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 91 (2005): 738–41.

³³ "It is permissible for the infirm to take by mouth all food and drink whenever they wish" [*Infirmis omni ora licitum est, cibum et potum sumere quandoque desiderant.*] Wasserschleben, *Die Bußordnungen*, 176, 316. "If someone on account of his infirmity or weakness is unable to bear the fasting or austerity which his confessor had prescribed for him, it should be permitted to him to redeem his fasting with piety and his worldly goods, that is, therefore, if he be wealthy, for each fast of twelve months let him give thirty solidos...; if however this be not within his power, then let him give twenty solidos; if that is not within his power, let him give ten solidos. If he is quite indigent and does not have ten solidos for the giving, let him give three solidos, for it is easier for a rich man to give thirty than for a pauper to give three" [*Si quis prae infirmitate sua vel mollitie jejunium vel austeritatem perferre nequeat, quam confessoris eius ei praescripserit, ei permissum erit jejunium suum redimere pietate et mundanis suis possessionibus, id est ergo, si dives sit, pro xii mensium jejunio det xxx solidos...; si tantum facultatis ei non suppetat, tunc xx solidos det, si autem tantum facultatis ei*

notably Christian orientation to the juridical analyses of pollution in the penitential texts.

Even if modified by analytical practices drawn from the study of Roman law or biblical teachings, the penitentials preserve a dominant interest in exploring remedies for problems when the transgression was neither a criminal action nor a violation of contract, and did not produce the damages or injuries recognised in statutory law. (Penitential canons referring to capital crimes and tangible damage, it is understood, are not devised as statutory prohibitions but, rather, seek to incorporate into a penitential system events that because of their spiritual damage require expiation.) The descent of the mouse into the soup and the response to his contamination epitomise a religious paradigm of an impure intrusion into the social world and its purgation. The migration of tacit religious beliefs into written prescriptions was a critical advance toward such prescriptions gaining institutional recognition, and eventually providing models for legal measures to protect the public against intangible dangers and spiritual corruptions.

The penitential canons link descriptions of polluting circumstances, such as the mouse, to prescriptions for purgation, such as sprinkling holy water. It is important to bear this pattern in mind. It signifies that the emphasis is on remedy rather than prohibition (one cannot prohibit the actions of mice). What the penitentials proposed seems verified in other sources. Christian rituals of purgation were gaining recognition as the remedies for a large range of social, legal, and political problems. Nebulous or uncertain corruptions as well as specific sins or crimes could be remedied by penitential purgation. The applicability of penance to a broad spectrum of evils and ills, voluntary or involuntary, increased its social and political attractiveness. Just as the diagnosis of ritual pollution could diffuse or obscure the location of guilt, so too could penitential remedy be protective for the suspected, accused, or convicted. Penance provided a means for individuals, and also communities, to demonstrate a capacity to assume responsibility for the spiritual condition of others. The practice of penance seems to have been so satisfying and frequent that it established expectations for legal prescriptions and also re-oriented some of the intent of judicial actions.

non suppetat, x solidos det; si denique indigens homo sit, ut x (dandi) facultatem non habeat, iii solidos det, quia dives potest facilius xxx solidos dare, quam pauper iii.] Wassersleben, *Die Bußordnungen*, 341.

To trace some of the movement of ideas regarding the purgation of religious pollutions from the purely personal to social, political, legal, and judicial spheres, this chapter now turns to sources other than the penitentials.

The politics of pollution and purgation

The Life of Leoba, the late 8th-century abbess of Bischofsheim in the diocese of Mainz, written probably in around 836 by Rudolf, a student of the renowned penitential author Hrabanus Maurus, has an account of corpse pollution and rites of Christian purgation notable for its resonance with circumstances postulated in the penitential corpus of canons.³⁴ As both Rudolf and jurists realised, reservoirs of water and wells presented special problems in purity codes. Although polluted liquids might be drained from their vessels, a polluted well could neither be emptied nor, by the principle of necessity, be abandoned. The remedy proposed by the jurists for such pollution was that the well be “purged” and sprinkled with holy water.³⁵ Leoba’s Life has an episode in which a “poor little crippled girl” given alms by the nuns of Bischofsheim drowned her illegitimate baby in a pool. “In this way,” writes Rudolf, “she added crime to crime, for she not only followed fleshly sin by murder but also combined murder with the poisoning of the water.”³⁶ A representative of the villagers called upon the nuns

³⁴ For a précis and bibliography, see David Farmer, *Oxford Dictionary of Saints* (Oxford, Clarendon Press, 1980), pp. 246–47. The Life is edited: Rudolf of Fulda, “Vita Leobae Abbatisae Bischofesheimensis,” ed. G. Waitz, in *Monumenta Germaniae Historica* [hereafter MGH], *Scriptores* [hereafter Script.], 15, 1: *Supplementa* t. 1–12, pars 3, *Supplementum* t. 13: *Vitae aliaeque historiae minores* (1887), 118–31. There is an abridged English translation by C.H. Talbot, ed. and trans., *The Anglo-Saxon Missionaries in Germany; Being the Lives of SS. Willibrord, Boniface, Sturm, Leoba, and Libuin, Together with the Hodoeporicon of St. Willibald and a Selection from the Correspondence of St. Boniface* (New York: Sheed and Ward, 1954). I have also consulted the version printed in the *Acta Sanctorum* Sept. VII (1757).

³⁵ “Si cuiuscumque generis animal in puteum ceciderit, et ibi mortuum inventum fuerit, purgetur puteus, et spargatur in eum aqua benedicta. Et si quis aquam gustaverit, antequam puteus expiatus sit, hebdomadam unam jejundet in pane et aqua; si nesciens, unum diem in pane et aqua jejundet.” Poen. Ps.-Egbert., *Wasserschleben, Die Bußordnungen*, 340.

³⁶ Talbot, *Life of Leoba*, 216. “...malis videlicet mala adjiciens: nam stupro homicidium et aquae contaminationem conunxit homicidio.” Rudolf of Fulda, “Vita Leobae,” 127.

“to remove this corpse from the river and make [the water] fit for us to use again.”³⁷ The nuns, presumably without the option of dispensing holy water to purify the well, responded with actions that conform to the penitential practice of psalm-singing for expiation, whether of pollution or guilt: “the venerable superior... ordered them all to go to the chapel and to stand with their arms extended in the form of a cross until each one of them had sung through the whole psalter, then three times each day, at Tierce, Sext, and None, to go around the monastic buildings in procession with the crucifix at their head, and to call upon divine mercy for their purgation.”³⁸

Rudolf complicates the story, however, with other conditions that illustrate how vague, fluid, permeable, and expandable concepts of pollution are: sexual and corpse pollution become mingled in his tale. This is perhaps not surprising, as seemingly the preponderance of material relating to pollution in Carolingian Christian sources concerns sexual pollutions. With the conventual setting of his tale fairly begging for exploration of the sexual aspect, Rudolf turns to the problem of a baby’s presence among the chaste. Rudolf strove to clarify that the accused was, in fact, not a nun but a member of the laity, “the wretched little woman”: the distinction would, of course, give the matter different import than if her chastity had been vowed to God and would affect her penitential obligations. Nevertheless, Rudolf continues, because she had dined at the abbess’s table and been given nun’s clothing, the nuns were accused of the crime.³⁹ Or rather, the nuns were accused

³⁷ Talbot, *Life of Leoba*, 217. “Nunc ergo rogate eas, quas virginum appellatione sublimare soletis, ut tollentes cadaver de flumine, nobis aquam reddant usibilem.” Rudolf of Fulda, “Vita Leobae,” 127.

³⁸ Talbot, *Life of Leoba*, 217–18. “...mater venerabilis... præcepit omnibus oratorium ingredi, et extensis in crucis modum brachiis stare, quoadusque singulæ Psalterium totum ex ordine psallendo complerent: et deinde per tres vices in die, hoc est, hora tertia, sexta, et nona, vexillo crucis elato, cum laetaniis monasterium circuire, et pro purgatione sua divinam misericordiam invocare.” Rudolf of Fulda, “Vita Leobae,” 127. The Penitential Pseudo-Beda recommends the practice of standing in a cross-form for purgation: “...sepius sive in cruce stando aut aliquid huiusmodi quod ad purgationem peccatorum pertineat faciendo.” Wasserscheben, *Die Bußordnungen*, 248–49. Standing in the form of a cross was also a type of judicial ordeal: Dieter Werkmüller, “Per pugnam probare: Zum Beweisrecht im fränkischen Prozeß,” in *Überlieferung, Bewahrung und Gestaltung in der rechtsgeschichtlichen Forschung*, Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, n.s. 69, ed. Stephan Buchholz, et al. (Paderborn: F. Schöningh, 1993), 385.

³⁹ “Erat ergo ibi quædam paupercula debilitate contracta quæ ad portam monasterii iacebat, elemosinam accipiens; cui cotidie a mensa abbatissæ statutus dabatur victus, et a singulis sanctimonialium vestes et alia quælibet necessaria pro divini amoris intuitu præbebantur.” Rudolf of Fulda, “Vita Leobae,” 127.

of untenable impurity: it seems that the miasmic quality of pollution also obscures the distinction between pollution and transgression. The villagers' anxiety over corpse pollution melds with suspicions of sexual and spiritual contaminations in the sardonic speech Rudolf supplies for them:

O what a chaste community! How admirable is the life of nuns, who beneath their veils give birth to children and exercise at one and the same time the function of mothers and priests, baptising those to whom they have given birth. For, fellow-citizens, you have drawn off this water to make a pool, not merely for the purpose of grinding corn, but unwittingly for a new and unheard-of kind of baptism.⁴⁰

Rudolf's likening of the nuns to priests and the well to a baptismal font heightens and focuses the gravity of the pollution in Christian terms; it is the Christian sacred which has been profaned. The further implication is that the nuns had violated both the boundary that separated them from the life of the married and also the boundary separating them from priestly functions, and were fully disordered in their religious condition. It was for such nebulous, shifting, and spreading suspicion that the abbess responded with the elaborate and public penitential ritual described above.

The flexibility of purgative measures and their capacity to serve as legal devices is also evident in the story. Rudolf includes an excursus that describes a forensic purgation. When the villagers urge the abbess to learn who is missing from the convent, since that person, they argue, is the guilty party,⁴¹ the nun Agatha, who had been absent to visit her parents, was summoned. Learning of the charge against her, she invoked the memory of Susannah and recited the crucial phrases of Susannah's prayer used in the purgative ritual of the ordeal:⁴² "Omnipotent God, you who know all things before they happen and from whom nothing secret is hidden, and who freed Susannah, who trusted in you, from false accusations, show your mercy upon this congregation gathered in your name, and do not suffer them to be stained by the filthy rumour about

⁴⁰ Talbot, *Life of Leoba*, 217. "O quam casta congregatio, quam gloriosa conversatio virginum, quæ sub velo positæ filios pariunt, matrum pariter ac presbyterorum fungentes officio, eosdem quos genuerint, ipsæ baptizant! Non enim, o cives, molendi hanc usibus tantum stagnastis aquam, sed novo huic et inaudito baptismati nescientes præparastis." Rudolf of Fulda, "Vita Leobae," 127.

⁴¹ Talbot, *Life of Leoba*, 217. "...Videte, videte, quæ ex monasterio desit, et eam scelus hoc perpétrasse, cognoscite." Rudolf of Fulda, "Vita Leobae," 127.

⁴² On Susannah and ordeal oaths, see Chapter One, pp. 47–50.

my sins, but rather allow them, for the praise and glory of your great name, to detect and proclaim whoever has committed this crime.”⁴³ As in Theutberga’s case, the combination of expectations for sexual purity, suspicions of infanticide, the secrecy of the crimes being charged, and precarious social and legal status seem to have made women vulnerable to accusations of agglomerated pollutions and crimes. The prayer in the *Life*, however, is altered from the form in the ordeal oaths so that it invokes divine protection not for the accused, but for the affected community. Just as the purgative ritual performed by the nuns was directed toward the welfare of those who used the well, Agatha’s recitation of the prayer refers to protecting others from the taint of contamination, and becomes an act of political virtue.

The political merits of purgative gestures lay in their capacity to span the disturbing area of unseen evils and the social world subject to public examination. Leoba’s *Life* shows the same tension between a secret crime as in Theutberga’s case—in Rudolf’s story, a case of child exposition conducted under the cover of night—and the pressure for public remedy, as “the whole populace was stirred, those of every age and both sexes.”⁴⁴ Saint Leoba, untrammelled by legal protocols (although Rudolf explicitly affirms the depth of her legal training)⁴⁵ and aided by grace, could effect what the bishops counseling Lothar and Theutberga could not: in answer to her prayers, sighs, and tears, the guilty woman, held captive by the devil and as if surrounded by flames, confessed her guilt to the abbess, although, according to Rudolf, because she did not merit purgation, the devil kept his due in her until the end of her life.⁴⁶ While

⁴³ “Quae cum venisset, causamque sceleris sibi imputari cognosceret, respiciens in caelum, ingemuit, et ait: ‘Deus omnipotens, qui omnia nosti, antequam fiant, et quem nullum latet secretum, quique Susannam in te confidentem, de falso crimine liberasti: ostende misericordiam tuam super hanc congregationem, in tuo nomine collectam, et ne patiaris eam propter peccata mea foedo rumore maculari: sed illam, quaecunque hoc nefas commisit, ad laudem et gloriam magni nominis tui dignare et detegere et publicare.’” Rudolf of Fulda, “Vita Leobae,” 127.

⁴⁴ “Ad hanc vocem plebs tota commota est: omnis aetas omnisque sexus quasi ad spectaculum uno agmine cucurrit. Vident nefas, facinus exhorrent, ac virgines sacras detestantur.” Rudolf of Fulda, “Vita Leobae,” 127.

⁴⁵ “Sed et dicta sanctorum Patrum, et decreta Canonum, totiusque aecclesiastici ordinis iura, plenitudini perfectionis adiecit...” Rudolf of Fulda, “Vita Leobae,” 126. On Carolingian women’s knowledge of learned law, see Nelson, “Literacy,” 272, where she notes the instance of a woman inheriting a law book and another woman commenting on the value of written law when issuing a charter.

⁴⁶ On the tradition of the divine tribunal in penitential confession, vide infra, pp. 101–103, and supra, p. 35.

God bestowed other secret signs and wonders on Leoba, the episode of the baby in the pool became famous, because it was public: “ideo celebre, quia publicum fuit.”⁴⁷ The oddity of this apparent tautology seems to point toward a reading that assigns technical meaning to “public,” the public crime that warranted public penance.

In Rudolf’s narrative, there is the same ambiguity in the rituals of purification that are the response to an accusation as there is in the ordeal: the gestures and texts are both penitential and imprecatory, yet they may be independent of confession or culpability. Purification and justice are the desired ends, and these may be sought by innocent and guilty alike. There can be considerable role-swapping in these penitential dramas, as virtues, vices, and grace move into complex patterns, manifest in different characters. The piety and humility of one actor may atone for the guilt of another; an innocent person may be polluted and in need of ministration; even the guilty may have progressed toward purity, as when the crippled girl, aided by Leoba’s tears, confessed. It is this rich variation in potential configurations of guilt, innocence, and rectification that often lends medieval texts their odd and subtle hues. Even seemingly simple *exempla* can explore or test how the loose alignment of factors converges to provide a solution that seems moral and just.

The dual problems of pollution and transgression complicated penitential negotiation of the religious landscape. They also opened possibilities for alternative analyses of the problems in a situation gone awry. Therein lay enormous political value: someone whose reputation or status was to be politically protected might be purged of pollution rather than punished for a crime. A seemingly simple *exemplum* in the *Life of Charlemagne* by Notker the Stammerer (or *The Monk of St. Gall*) illustrates the point. It is surely not without irony that Notker frames his story around the issue of cleanliness, as he mocks the antagonist, a deacon, as one who washes too much.

There was a certain deacon who followed the habits of the Italians in that he was perpetually trying to resist nature. He used to take baths, he had his head very closely shaved, he polished his skin, he cleaned his nails, he had his hair cut as short as if it had been turned on a lathe, and he wore linen underclothes and a snow-white shirt.⁴⁸

⁴⁷ Rudolf of Fulda, “Vita Leobae,” 127.

⁴⁸ Trans. Lewis Thorpe, *Einhard and Notker the Stammerer: Two Lives of Charlemagne* (Penguin Classics) p. 130. “Quidam diaconus juxta consuetudinem Cisalpinorum

Notker signals overtly the dichotomy between the deacon's attention to carnal purity and the actual corruption of his soul: "he presumed to read with a polluted conscience the Gospel."⁴⁹ As the deacon was reading the Gospel, a spider descended (a sly parody of literary appearances of the Holy Spirit?) from the ceiling three times to the deacon's head, and from its venom the deacon died. While the story might well end there, Notker's attention to Charlemagne as the central figure of his biography produces a striking epilogue: "Charlemagne, the most devout of kings, considered himself guilty of the man's death, because he had observed the cause of danger and had done nothing to prevent it. He therefore insisted on doing public penance."⁵⁰

Notker's articulated moral analysis is almost deliberately flawed. The audience knows that justice was served upon the proud deacon—divine justice, at that. Charlemagne cannot, therefore, be considered seriously culpable. Yet the implication that the emperor, the paterfamilias of his people and a Christian, showed such indifference to a man's death, would seem politically damaging, as would be, by the tacit rules of pollution, his proximity to a poisoned corpse. The emperor's decision to perform public penance shows the political efficacy of the ritual. Failure to intervene at a natural death in which no human agent was implicated was not subject to legal prosecution, but the responsibility of the emperor for public welfare is affirmed by the gesture of public purgation.

Blood libel and the disembodied soul

Although both pollution and purgation could be protective devices, they could also provide grounds for prosecutorial and punitive measures.

contra naturam pugnare solitus, balneas trans caput suum pressissime radi faciens, cutem expolivit, unguis murcavit, capillosque brevissimos quasi ad circinum tornando decurtavit, lineas et camisiam candidissimas induit." Notker Balbulus, [*Gesta Karoli Magni*]: *Taten Kaiser Karls des Grossen*, ed. Hans F. Haefele, MGH, *Scriptores rerum Germanicarum, nova series*, vol. 12 (1959; repr. Munich: Monumenta Germaniae Historica, 1980), 44.

⁴⁹ "Et quia devitare non potuit quin potius per hoc gloriosior appareret, sponte coram summo Deo et sanctis angelis et in conspectu severissimi regis et procerum eius evangelium, ut ex consequentibus patuit, polluta conscientia legere praesumpsit." *Gesta*, 44.

⁵⁰ Thorpe, *Einhard*, p. 131. "Religiosissimus vero Karolus pro eo, quod vidit et non prohibuit, quasi homicidii reum publica se ipsum penitentia multavit." *Gesta*, 45.

Legislation based on the metaphor of pollution is, on the one hand, thus cast as protecting public welfare (rather than remedying injury or loss); on the other hand, it has a more or less latent element of prosecutorial interest. Since pollutions are often perceived in the absence of voluntary or criminal action, such legislation risks authorising the prosecution of actions or conditions not prohibited by law. A person cannot be indicted for being ill, but the responsibility for spreading illness is more problematic. Since pollution may also be perceived when tangible damage is not evident, the metaphor can be extended with regard to the transmission of ideas, beliefs or difference.

Carolingian use of the metaphor of pollution as the rationale for statutory legislation proposed ostensibly to protect public welfare can be seen in the *Adversus Iudaeos* treatise of Amulo, bishop of Lyons. Amulo's treatise, presented as a letter of appeal to the emperor, was cast as a legal brief.⁵¹ It drew upon a treatise by his predecessor, Agobard, that also was framed around a dossier of Roman and canon law and patristic precedent, likely compiled by Agobard's secretary and jurisconsult, the deacon Florus.⁵² Agobard's letter was an effort to make the case that Jews and Christians should be segregated. The rationale for segregation, he explained, is that, just as heretics are put out of communion with orthodox Christians as a quarantine against the spread of infectious doctrine, so should Christians be protected against the blasphemies of the Jews.⁵³ Using the same legal dossier, and also referring to contemporary Jewish sources, as did Agobard, Amulo wrote a significantly longer and more elaborated argument, again to persuade the ruler, now Charles the Bald, to enact the legislation that would segregate Jews and Christians.⁵⁴ Amulo's letter was written in

⁵¹ Manuscripts and bibliography are noted in Marie-Hélène Jullien and Françoise Perelman, *Clavis des auteurs Latins du moyen âge territoire Français, 735–987* (Turnhout: Brepols, 1994), 145–46. The text is printed in PL 116, cols. 141–84.

⁵² "De Iudaicis superstitionibus et erroribus ad Ludovicum," in Agobardus Lugdunensis, *Opera Omnia*, 199–221. See Bernhard Blumenkranz, "Deux compilations canoniques de Florus de Lyon et l'action antijuive d'Agobard," *Revue historique de droit français et étranger, 4e série* 33 (1955): 227–54, 560–82.

⁵³ Cf. Savigni, "Purità Rituale," 252.

⁵⁴ Hypotheses regarding the immediate political contexts in which the letters were written are offered by Johannes Heil, "Agobard, Amolo, das Kirchengut und die Juden von Lyon," *Francia* 25 (1998): 39–76. Questions regarding the intended recipient of Amulo's letter are aired on pp. 66–67. See also Bat-Sheva Albert, "Adversus Iudaeos in the Carolingian Empire," in *Contra Iudaeos: Ancient and Medieval Polemics Between Christians and Jews*, ed. Ora Limor and Guy G. Stroumsa, Texts and Studies in Medieval and Early Modern Judaism, 10 (Tübingen: J.C.B. Mohr, 1996), 119–42 (135–42).

846, the year that a council was re-convened in Paris to complete the proceedings which it had been unable to conclude when convened at Meaux in 845; the council, known only from the final set of canons issued in Paris, is thus called the Council of Meaux-Paris.⁵⁵ Included in its canons are most of the legal texts compiled by Florus and cited by Agobard: collectively, they comprise canon 73 of the council's acts. They are in turn quoted by Amulo, and common features make it clear that the relationship between Amulo's letter and the conciliar decrees is a direct one.⁵⁶ The council had forwarded its *acta* to Charles the Bald for ratification, and Charles had agreed to ratify only 19 of the 82 canons; canon 73 was not among the ones he endorsed.⁵⁷ It seems possible, even probable, that Amulo wrote his tract to explain more fully the rationale for canon 73, and to argue for its ratification.

One might pass over Amulo's treatise as simply yet another ugly instance of medieval anti-Judaic polemic, but for the purposes of this study it has particular interest because it attempted to apply the specifics of corpse and blood pollution to an argument for legal restrictions to be promulgated across the empire.⁵⁸ The treatise also reveals the discursive mechanics of the transformation of tacit rules into written prescription. It displays explicitly the ways in which legal and political arguments use metaphor, analogy, and synecdoche to create the appearance of coherence, and it shows how Carolingian education in biblical exegesis provided the patterns for a distinctive, religiously inflected jurisprudence.

Another voice trying to persuade Charles that the Jews of the Carolingian empire were a source of grave danger was that of John Scottus Eriugena, who likened them to jackdaws: see Paul Dutton, "Eriugena, the Royal Poet," in *Jean Scot Écrivain: Actes du IV^e Colloque international, Montréal, 28 août–2 septembre 1983*, ed. G.-H. Allard, *Cahiers d'études médiévales, Cahier spécial, 1* (Montréal, Paris: Éditions Bellarmin; J. Vrin, 1986), 51–80 (76–77).

⁵⁵ The acts of the council are edited: *Die Konzilien der Karolingischen Teilreiche, 843–859* [*Concilia Aevi Karolini 843–859*], ed. Wilfried Hartmann, MGH *Concilia* [hereafter *Conc.*] III (Hanover: Hahnsche Buchhandlung, 1984), 59–132. On the dating of Amulo's letter, see Albert, "Adversus Iudaeos in the Carolingian Empire," 140–41.

⁵⁶ Wilfried Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien* (Paderborn: F. Schöningh, 1989), 209.

⁵⁷ Hartmann, *Die Synoden*, 216; Albert, "Adversus Iudaeos in the Carolingian Empire," 140–41.

⁵⁸ The contemporary efforts of Islamic (Maliki) jurists to apply pollution rules in order to identify Christians as a threat to ritual purity and to make explicit the proposition that contact between Muslims and Christians should be limited is an especially intriguing parallel. Safran, "Rules of Purity", 199, 201–08, 211–12.

That Amulo should experiment with discussion of corpse and blood pollution was in itself an unusual strategy. Pollution by corpse and blood was complicated by the radical effects of Christian doctrine upon attitudes toward the dead. Christian memory is directed to the Crucifixion, with all the brutalities that were inflicted upon the body of Christ. The mutilated bodies of Christian martyrs became objects of intense veneration, as they presented the wondrous paradox of degradation on this earth and sublimity in their resurrection. This paradox courses through medieval hagiography: bodies fail to become corrupt, they exude sweet perfumes rather than a stench, they are carefully located for readers in particular spots, not so they can be avoided but so that their presence can be embraced. The dead may be revived by the compassion of a saint, who will touch or bathe with tears the cadaver. It must have been a calculated decision, then, to appeal to his colleagues' sensitivity to matters of pollution that caused Amulo to frame his argument in the rhetoric of corporeal vulnerability to contamination.

It was, he argued, a corporate vulnerability, and the danger was heightened by the imminence of divine judgement. Amulo informed the audience that the corporate body of Christians, whom he described using the image of the Church as the Bride of Christ, was threatened by diabolical deceptions, just as Eve was deceived by the serpent. Amulo presented this threat to spiritual integrity as immediate: "It is especially to be feared by us, who are in these last and dangerous times."⁵⁹ Emphasising the description of the present as the last days, the prelude to the Second Coming, and echoing Agobard, he asked (quoting Luke), "*When the Son of Man comes, will he find faith on earth?*" For the prophet Isaiah indicated this time, and these dangerous days,

⁵⁹ Cap. 2 (PL 116, col. 141): "Quod maxime nobis metuendum esse, qui in his novissimis et periculosis temporibus occulto Dei iudicio Ecclesiae regimen sortiti sumus..." I have collated the PL text against the two 10th-century MSS: Padua, Biblioteca Antoniana, codex 73 (Scaff. IV), and Montpellier, Bibliothèque Interuniversitaire, Section Médecine, 237. On Carolingian apocalypticism, see Wolfram Brandes, "Tempora periculosa sunt. Eschatologisches im Vorfeld der Kaiserkrönung Karls des Großen," in *Das Frankfurter Konzil von 794. Kristallisationspunkt karolingischer Kultur: Akten zweier Symposien (vom 23. bis 27. Februar und vom 13. bis 15. Oktober 1994) anlässlich der 1200-Jahrfeier der Stadt Frankfurt am Main*, ed. Rainer Berndt, Quellen und Abhandlungen zur mittelhochdeutschen Kirchengeschichte (Mainz: Selbstverlag der Gesellschaft für mittelhochdeutsche Kirchengeschichte, 1997), 49–79; and E. Ann Matter, "Exegesis of the Apocalypse in the Early Middle Ages," in *The Year 1000: Religious and Social Response to the Turning of the Millennium*, ed. Michael Frassetto (New York: Palgrave, 2002), 29–40.

in which the love of many grows cold with overflowing wickedness.”⁶⁰ And, like Agobard, he asserted that the danger in these Last Days was the influence of “*deceitful spirits and doctrines of demons, through the pretensions of liars whose consciences are seared*” (1 Tim. 4:1–2). He then proceeded to link the false prophets and the Jews, placing the Jews in an apocalyptic context by building his discussion around citations of the Book of the Apocalypse and one of the letters of John, whom he would have considered the same John as the author of the Apocalypse.

This apocalyptic perspective, and in particular, the focus on false prophets, introduces Amulo’s argument that the integrity of Judaism has become corrupted. Rather than presenting the Jews as continuing witnesses to God’s covenant, as was standard even in *Adversus Iudaeos* tracts, Amulo depicts them as false witnesses, as deceptive and destructive to faith as heretics.⁶¹ Central to his thesis are the verses of Revelation 2:9 and 3:9, in which the Lord speaks of “...those who say they are Jews and are not, but are a synagogue of Satan” and “...those of the synagogue of Satan who say they are Jews and are not, but lie.”⁶² He is blunt in explaining how the Chosen People became thus profaned: they were, he says, possessed by demons. He owes this explanation to Jerome’s commentary on the passage from Luke about the unclean spirit expelled from a man who goes through the waterless places seeking rest, and decides to return to its former home. Finding it swept and put in order, the demon goes and brings seven other spirits “more evil than himself,” who join the first spirit in occupying his home.⁶³ Jerome’s exegesis is that the unclean spirit expelled from the Jews when they accepted the Law, after wandering futilely among the Gentiles, then returned to the Jews, where it found the clean and swept home of

⁶⁰ Cap. 2 (PL 116, col. 141): “Unde et Dominus in Evangelio, omnium fidelium mentes terret, et praemonet, dicens: *Verumtamen Filius hominis veniens putas inveniet fidem in terra?* (Luc. 18:8). Hoc namque tempus, et hos periculosissimos dies, in quibus abundante iniquitate refrigescit charitas multorum, etiam Isaias propheta significat...” (Isaiah 22:25).

⁶¹ On the role of Jews in medieval Christian theology as continuing witnesses, see Gilbert Dahan, *Les intellectuels chrétiens et les juifs au moyen âge* (Paris: Éditions du Cerf, 1990), 573–81.

⁶² Amulo Lugdunensis, “*Adversus Iudaeos*,” PL 116, col. 142. Amulo will use the phrase “synagogue of Satan” five times in the next six chapters. On the “synagogue of Satan” topos, see Albert, “*Adversus Iudaeos* in the Carolingian Empire,” 131.

⁶³ Jerome, *Commentariorum in Matheum Libri IV*, ed. D. Hurst and M. Adriaen, CCL, 77 (Turnhout: Brepols, 1969), 98 (lib. II, on verse 12:43).

Pharisaical observances.⁶⁴ Amulo thus presented an exegesis in which the Jewish observances intended to cleanse pollution are inverted and transformed into an opening for demons. Jerome, quoted by Amulo, concludes that the possessed Jews, by their blasphemy of Jesus, lost the favour of the Lord, who would no longer listen to their songs and harps (a reference to Amos 5:23).⁶⁵

By combining apocalyptic references and an allegorical reading of the story of the wandering demon, Amulo created a defined category of those who were polluted and would pollute, alleged that there was religious sanction against such persons, and asserted the urgency of the danger. Invocation of clear and present danger as the special circumstance for innovative legislation is also a feature of the prose preface that introduces the acts of the Council of Meaux-Paris; the same invocation of danger is in other Carolingian conciliar prefaces that claim, in preparation for councils, that three-day fasts were proclaimed throughout the kingdom and special prayers and litanies were offered to appease divine displeasure with a people whose corruptions the conciliar decrees strive to rectify.⁶⁶ The author of the Meaux-Paris preface offers specific proof of that divine displeasure: the recent incursions of Viking raiders.⁶⁷ Despite the attempts of the bishops who then convened at Beauvais to remedy the situation, the Lord, according to this author, “in his just judgement, with a deaf ear, ignored the great groaning of the wretched and the many tears and the almost intolerable and (in this part of the kingdom, hitherto) unheard of afflictions and

⁶⁴ Amulo, “Adversus Iudaeos,” PL 116, cols. 83–84; cp. Jerome, *In Matt.*, 98–99.

⁶⁵ Amulo constructs a montage of Jerome’s works to make this point. Cf. Jerome, *In Matt.*, 99; Jerome, *Commentarii in Prophetas Minores*, ed. Marcus Adriaen, CCSL, 76, 76A (Turnhout: Brepols, 1969), 295 (pars I, 6); Jerome, *Sancti Eusebii Hieronymi Epistulae*, ed. Isidor Hilberg, Corpus Scriptorum Ecclesiasticorum Latinorum [hereafter CSEL], 54–56 (vol. 56/1) (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1996), 48 (Ep. 121.10).

⁶⁶ E.g., Conc. Moguntinense (a.813), MGH, Conc. II, 1, p. 259.

⁶⁷ Connecting this trauma to the prophecies of Jeremiah, he writes, “Then indeed, just as was necessary... the Lord gave *from the North*, whence, according to the prophet, *an evil was extended*, apostles worthy of our merit, namely cruel and relentless persecutors of Christians, the Norsemen, who, coming up to Paris, enacted what the Lord commanded” [Inde vero, quia, sicut necesse fuerat, divinis iussionibus non est secuta obediencia, dedit dominus *ab aquilone*, unde iuxta prophetam *pandetur malum*, dignos meritis nostris apostolos, crudeles scilicet et inmanissimos christianitatis persecutores Nortmannos, qui usque Parisius, ut praevenerant ex ore domini, sermone sunt etiam subsecuti] Praefatio, Meaux-Paris, in Hartmann, MGH, Conc. III, 82.

horrible calamities.”⁶⁸ This plight, he explains, motivated the bishops to convene the Council of Meaux-Paris. The very creation of canon law, then, might be a penitential act, a corrective response to God’s displeasure.

This perception of history as the stage of a vast religious drama in which all persons in the kingdom are participants marks some of the texts of the canons themselves. The council is distinguished by two explicit references in its decrees to the Antichrist. The first is in canon 10, a lengthy protest against the usurpation of authority over monasteries by lay rulers. The canonist, complaining that laity were not only prescribing monastic discipline and conduct but also conferring holy orders, cites the verse from John that Agobard cited, “And now many are made antichrists,” supplemented with a verse from Mark heralding the time of tribulation.⁶⁹ In this canon, the Antichrist is once again the corporate unholy, signifying a body of persons who are not recognised as legitimate transmitters of faith or knowledge: they are thus false teachers.⁷⁰ The corporate Antichrist appears again in canon 74 of Meaux-Paris, which anathematises priests and laymen who have received gifts from Jews, for, the canon states, they “have encouraged... the perfidy of those who are known (and not without reason) to be members of the Antichrist’s body...” and “it is proper that... [they] should be separated from the body of Christ.”⁷¹

The phrasing of canon 74, however, is anomalous: usually the Carolingian conciliar legislation relating to Jews is not marked by apocalyptic rhetoric. This canon is taken verbatim from the Fourth Council of Toledo, held in 633, in the wake of coerced baptisms of Jews in Spain. Spanish conciliar legislation, which is relatively liberal with its references to Antichrist, was well known to Carolingian canonists, but

⁶⁸ “... tot miserorum gemitus tantasque lacrimas et pene intolerabiles et in hac regni dumtaxat parte inauditas afflictiones et horribiles calamitates, surda, si dici fas est, aure dominum iusto iudicio praeterire...” Hartmann, MGH, Conc. III, 83.

⁶⁹ “Quod non est aliud, nisi quod Iohannes dicit, cum venerit, antichristum acturum, et *nunc antichristi*, videlicet isti, *multi* sunt; et quod dominus secundum Marcum: *Cum videritis abominationem desolationis stantem in loco, ubi non debet; qui legit, intellegat.*” Hartmann, MGH, Conc. III, 90.

⁷⁰ On the depiction of adversaries as ministers of the Antichrist in the Carolingian period, vide infra, p. 93.

⁷¹ “Multi quippe hucusque ex sacerdotibus atque laicis accipientes a Iudeis munera perfidiam eorum patrocinio suo fovebant, qui non inmerito ex corpore antichristi esse noscuntur, quia contra Christum faciunt.” Hartmann, MGH Conc. III, 123.

its citation seems to have been approached cautiously.⁷² In general, the Carolingian legal sources pertaining to Jews are conservative, and repeat Roman legislation or the limited set of canons from Gallic councils of late antiquity, texts which are not cast in apocalyptic language.⁷³

What marked the relevant Roman law was the language of pollution. Amnon Linder observes this aspect of the language of the Roman imperial chancellery and lists a number of instances in which Jews are depicted with the vocabulary of "disease," "contagion," "a plague...that spreads by contagion," and the verbs "to contaminate," "to defile," "to corrupt with filth," and so forth.⁷⁴ The first legal text cited by bishop Amulo, from the Theodosian Code, begins with the sentence, "Since...the religious populace should not be depraved by any superstition, we order that...any sect hostile to Catholics should be expelled from...the...cities, so that they shall not be defiled by the very contagious presence of the criminous."⁷⁵ Amulo's texts from late antique Gallic synods, following Roman precedent, refer to "anyone

⁷² The dossier compiled by Florus of legal precedents for the restriction of relations between Jews and Christians included four canons from Spanish councils, but Agobard chose not to cite them in his letter, and it has been proposed that this editorial suppression indicates a desire to exclude "foreign" legislation. More salient than the nationality of Spanish anti-Jewish legislation, perhaps, were its innovations, which were at times radical. Seventh-century Spanish royal legislation prohibited, among other things, Jewish Passover observances, dietary regulation, and circumcision; and Spanish councils, convened under royal authority, often issued canons in keeping with the promulgated secular measures. See Amnon Linder, *The Jews in the Legal Sources of the Early Middle Ages* (Detroit and Jerusalem: Wayne State University Press and the Israel Academy of Sciences and Humanities, 1997), 257–332, 485–538.

⁷³ There was no continued development in the Carolingian realms of such legislation pertaining to Jews: the surviving evidence attests to only three canons from 7th-century Frankish councils that affected Jews (two of them concern slave-holding), and it appears that the Council of Meaux-Paris was the first council since the mid-7th century to issue canons referring to the Jewish community. See the comprehensive collection of texts in Linder, *Legal Sources*, 468–82, 539–48.

⁷⁴ Amnon Linder, *The Jews in Roman Imperial Legislation* (Detroit and Jerusalem: Wayne State University Press and the Israel Academy of Sciences and Humanities, 1987), 60.

⁷⁵ "Quia religiosos populos nullis decet superstitionibus depravari... omnem... sectam catholicis inimicam, ab ipso aspectu urbium diversarum exterminari debere praecipimus: ne praesentiae quidem criminorum contagione foedentur..." Amulo, "Adversus Iudaeos," PL 116, col. 174. Cf. Sirmondian Constitutions, 6, reproduced from the Mommsen edition (pp. 911–12) in Linder, *Roman Imperial Legislation*, 307–08. The passage concludes, "If anyone shall be caught sacrificing with polluted and contaminated intentions in any place, our wrath shall rise against his property and life..."

defiled by a banquet with Jews”, “anyone defiled by their impieties,” and the “depravity of conjugal relations” between Christians and Jews.⁷⁶

Amulo’s adoption and elaboration of the rhetoric of pollution is unusual in that, rather than offering the dichotomy standard among Christian exegetes that described Jews as carnal and Christians as spiritual in their religious observances, he proposed that Christians were subject to carnal pollution. The primal sense of pollution through physical contact with the forbidden seems witnessed in Amulo’s concern about Christian consumption of Jewish food and wine, which he describes as “polluted,” in shared meals (“they unceasingly drink and eat,” he says).⁷⁷ Only slightly less immediate or tangible is simple proximity through social or economic contacts. Amulo’s perspective is revealed in his declaration of his actions as bishop:

I, in the present year, detesting their impiety and desiring to remove the Christian population committed to us from their contagion, have announced publicly, and again, and once more, and a third time, that according to the ecclesiastical statutes all are to segregate themselves from their company, so that Christians do not work for them...but they themselves should work and procure necessities with their pagan slaves, so that no-one be contaminated by their food or drink...

Commenting on his action, Amulo continues, “if I omit this negligently, I fear divine judgement, lest those who from this circumstance are contaminated and depraved, or even perish, will be ascribed to my carelessness and failing.”⁷⁸ “We ought to insist that the peoples of

⁷⁶ Amulo, “Adversus Iudaeos” (PL 116, cols. 181–82), cites canons from the first Council of Mâcon (a.581–83), the councils of Épaone (a.517) and Clermont (a.535), and the third Council of Orléans (a.538). For modern versions of the texts (based upon the edition of C. de Clercq), translations into French, and introductory material, see *Les canons des conciles Mérovingiens (VI^e–VII^e siècles)* ed. Jean Gaudemet and Brigitte Basdevant, 2 vols., Sources Chrétiennes, 353–54 (Paris: Éditions du Cerf, 1989).

⁷⁷ “...et, quod est infelicius, ab eis etiam constuprentur, et ex vino eorum multis modis ab eis etiam ex industria polluto, quod indesinenter bibunt et emunt...” Amulo, “Adversus Iudaeos,” cap. 41 (PL 116, col. 170). Cp. Safran, “Purity Rules,” 205.

⁷⁸ “Unde et ego anno praesenti, detestans eorum impietatem, et Christianum populum qui nobis in Domino commissus est, ab eorum contagione removere desiderans, annuntiavi publice, et semel, et iterum, et tertio, ut juxta ecclesiastica statuta omnes se ab eorum consortio segregarent, ne Christiani eis servirent, vel in civitate, vel in villis; sed ipsi sibi cum servis suis paganis necessaria agerent et procurarent, neque eorum cibo vel potu aliquis contaminaretur...si hoc negligenter omitto, timeo divinum iudicium, ne illi qui ex hac occasione contaminantur, et depravantur, vel etiam pereunt, meae incuriae et reatui ascribantur.” Amulo, “Adversus Iudaeos,” cap. 43 (PL 116, cols. 171–72).

the faithful are not to be stained and depraved by the company and contagions of the impious.”⁷⁹

In Amulo’s text, pollution links the spiritual and the corporeal in ways beyond the notion of physical contact with a forbidden substance, person, thing, or place. Corporeality was a surprising thing in the hands of Carolingian exegetes, largely because of their ability to merge or elide the spiritual and the carnal. The exegetical experiments that construed the relation of corporal or corporate images to spiritual meaning enabled Amulo to develop a complex description of pollution that both drew upon its danger as a physical experience and also relocated it in a spiritual domain. His hermeneutic opposed Jewish reading of Scripture, asserted the truth of Christian sacred history, and, in the end, inverted Jewish pollution codes in order to arrive at the conclusion that Jews were profaned.

These points emerge in an argument that occupies about a third of the treatise and that focuses on Jewish claims that the body of Jesus, specifically the corpse, was an incipient source of pollution. The crucial text is Deuteronomy 21:22: “And if a man has committed a crime punishable by death and he is put to death, and you hang him on a tree, his body shall not remain all night upon the tree, but you shall bury him the same day, for a hanged man is accursed by God; you shall not defile your land which the Lord your God gives you for an inheritance.” Amulo immediately affirms that this verse is a prophetic reference to Jesus.⁸⁰ For the present purposes, the most interesting part of Amulo’s discussion is his interpretation of the land that would be polluted by delayed burial. With typically Carolingian ease of movement between the literal and spiritual senses of Scripture, Amulo interpreted the verse as meaning that for the Jews, Christ has never been removed from the Cross, because Jews neither honoured his memory, as one does in burial, which is why tombs are called *memoriae*, “memorials,” nor acknowledged his resurrection: he has thus been left on the Cross

⁷⁹ “Juxta haec exempla et constituta priorum principum, et beatissimi patris atque pontificis monita, fideliter et vigilanter, auxiliante Domino, instare debemus; ne fidelium populi impiorum consortiis et contagiis maculentur et depraventur.” Amulo, “Adversus Iudaeos,” cap. 51 (PL 116, col. 178).

⁸⁰ Amulo, “Adversus Iudaeos,” cap. 26 (PL 116, col. 158). Amulo’s training in critical methods is evident at this point. He proceeds to examine, element by element, the problems it raises: in what sense was Jesus hanged for “crimes”? Was he really “hanged,” or suspended by nails? What might “accursed by God” mean in Jesus’s case? Was he really under the power of his executioners? What does “tree” mean?

for the whole period of the present life. Equating spiritual and physical suspension and extending it across time, Amulo transformed the lifetimes of those present at the death of Jesus into the span of Christian time, and declaimed that, “the night of death will come upon them; the night of damnation and of eternal shadows: and he who for the salvation of all was hung upon a tree will spend the night and remain among them upon the tree because of the derision and mocking of his passion which they maintained for the whole time of their life.”⁸¹

To this reference to the end time Amulo added his own explanation of the land the Deuteronomic verse called polluted by the hanged man, again using spiritual exegesis to extend the pollution across the people he allegorically equated to the land:

How much pollution and contamination followed the Jews, who did not want to give this honour to the Lord, the Law adds, saying, ‘and you shall not contaminate your earth, which the Lord God will give to you as an inheritance.’ They are indeed the earth, which the Lord once gave to them, that they might be for Him an inheriting people, just as Moses said to them (Deut. 4:20).⁸² They are the earth to which Jeremiah cried out: ‘O land, land, hear the word of the Lord’ (Jer. 22:29) and concerning which the Psalm says, ‘The land was polluted with blood, thus they became unclean by their acts.’ (Ps. 106[105]:38–39) ... Because they despised, they have contaminated and polluted their earth ... daily it is said to them through Ezechiel the prophet, ‘You are an unclean land, unrained upon’ (Ezech. 22:24), and through Isaiah: ‘Your hands are full of blood’ and again: ‘Your hands are indeed polluted with blood, and your fingers with wickedness’ (Isa. 1:15; 59:3), namely because they clamoured, saying: ‘His blood be on us and on our children’ (Matt. 27:25).⁸³

⁸¹ “Et illi remanserunt in nocte infelicitatis et caecitatis suae. Omnes ergo quicumque ex eis passionem Domini, ad apostolorum praedicationem et magnalia crediderunt, suspensus in ligno (juxta legis vaticinium) eodem sepelierunt die, quia pretiosam mortem Christi, dum adhuc eis luceret Dei gratia, religiosa memoria honoraverunt; nam et defunctorum sepulcra memorias appellamus. Caeteris vero horrenda nocte oppressis, et venerabilem Christi passionem usque hodie irradientibus, permanet et pernoctat suspensus in ligno, cui honorificam memoriam exhibere nolunt.” “Adversus Iudaeos,” cap. 32 (cols. 162–63).

⁸² “Adjungit lex, quanta pollutio et contaminatio Iudaeos consecutura esset, qui hunc honorem Domino dare noluerunt et nolunt, dicens: ‘*Et non contaminabis terram tuam, quam Dominus Deus tuus dabit tibi in haereditate*’ (Deut. 21:23).’ Ipsi sunt enim terra, quam aliquando Dominus Deus dederat illis, ut essent ei populus haereditarius, sicut Moyses ad eos dicit: ‘*Vos elegit Dominus de cunctis gentibus, ut haberet populum haereditarium*’ (Deut. 4:20).” “Adversus Iudaeos,” cap. 34 (PL 116, col. 164).

⁸³ “Ipsi sunt terra cui clamabat Jeremias: *Terra, terra, terra, audi sermonem Domini* (Jer. 22:29), et de qua in psalmo dicitur: *Et adulterata est terra in sanguinibus, et coinquinati sunt in operibus suis*, sive (ut nos consuevit cantamus): *Interfecta est terra*

In short, Amulo applied the Levitical code of pollution by blood to the Jews and concluded that Christ's body and blood did indeed pollute them, even as they refused to ingest it as do Christians.

Through the rhetorical device of allegory, Amulo transformed the people of the Jews, recognised as sacred if highly problematic by most patristic authorities, into a profane people, possessed by demons, a people of false prophets, following false Messiahs, thus subjects or ministers of the Antichrist; he accomplished this by redirecting the rules of pollution described in Hebrew Scripture so that the prophecies described the Jews as a polluted people. In response to the feared intrusion or infiltration, destruction, profanation, and pollution of the Antichrist, some Carolingian clerics proposed that legislation could demarcate sacred boundaries. The laws they advocated regarding Jews were the simplest and clearest expression of community boundaries: the physical, a protection of the bodies of Christians against contact with non-Christian bodies, signifying their protection against spiritual contamination.

Amulo's *Adversus Iudaeos* indicates how legal discourse was shaped by Carolingian intellectual training, especially by the highly technical exercises in historical and theological analysis. As inhabitants of the empire placed themselves in a history that extended from Creation to the Apocalypse and progressed through a meaningful succession of empires and principalities in between, they also entered a scheme of history that marked different peoples by their religious practices.⁸⁴ The tendency among Carolingian intellectuals to read the present as a sacred stage for the divinely ordained future sharpened their identifications of the Antichrist. The Christian description of the body of Christ as the Church, comprising the members of the faithful, spawned a correlative description of the Antichrist as the body of those opposing Christ, whether Jews, Muslims, or Adoptionist heretics. Contact with

in sanguinibus, et contaminata est in operibus eorum (Ps. 106[105]: 38–39). Sed quia contempserunt, ... contaminaverunt et polluerunt terram suam, ... quotidie eis dicitur per Ezechielem prophetam; *Tu es terra immunda, et non compluta* (Ezech. 22:24); et per Isaïam: *Manus vestrae sanguine plenae sunt*. Et iterum: *Manus enim vestrae pollutae sunt sanguine, et digiti vestri iniquitate* (Isa. 1:15; 59:3). Videlicet quia clamaverunt, dicentes: *Sanguis ejus super nos et super filios nostros* (Matt. 27:25). "Adversus Iudaeos," cap. 34 (PL 116, cols. 164–65).

⁸⁴ On Carolingian perceptions of divine and human history, see Susan A. Rabe, *Faith, Art, and Politics at Saint-Riquier: The Symbolic Vision of Angilbert* (Philadelphia: University of Pennsylvania Press, 1995), 66–71.

the profane body of the Antichrist would pollute the sacralised body of Christ.

The transition to more abstract understandings of pollution was supported by exegetical training that encouraged intense use of metaphor and allegory. These literary devices knit together, detail by detail, the carnal and spiritual aspects of the body of Christ.⁸⁵ To make sense of the larger pollutions or corruptions to which whole communities or peoples might be vulnerable, the construction of pollution also expanded or shifted to a plane more metaphysical than physical. The potential effects of this intellectual orientation would be to limit the importance of carnal pollution taboos in the personal sphere and to expand penance as an exercise with political, national (or imperial) import. Pollution became not merely a personal event, but a national or collective one.⁸⁶ The objective, however, was always to move the audience to the spiritual frame, and to affirm that the condition of the soul has priority over the condition of the body.

Amulo was not alone in his efforts to use metaphor and allegory to realign the pollution taboos recorded in the books of the Old Testament so that they expressed Christian and spiritual meaning. Using similar exegetical strategies, Hrabanus Maurus used his commentary on Leviticus to turn the pollution taboos against Jews and to proffer prescriptions for purification and correction of an endangered Christian body. His readings of the Levitical rules preserve their form as admonitions but redirect their meaning into penitential formulations for correction of spiritual failings. The animals prohibited in the dietary codes become emblems for human vices, many of which Hrabanus

⁸⁵ A problem in which Carolingian theologians were especially well schooled, because of the debates over both Adoptionism and the Eucharist. See the important work of Celia Martin Chazelle, *The Crucified God in the Carolingian Era: Theology and Art of Christ's Passion* (New York: Cambridge University Press, 2001), esp. ch. 6 on the Eucharist controversy. On the interweaving of ideas about Christ's incarnate form and the metaphysical body of believers comprising the Church, see Abigail Firey, "Carolingian Ecclesiology and Heresy: A Southern Gallic Juridical Tract Against Adoptionism," *Sacris Erudiri* 39 (2000): 304–07.

⁸⁶ This idea is powerfully presented by Parker, *Miasma: Pollution and Purification in Early Greek Religion*. For its formulation by Gregory the Great, whose thought strongly influenced Carolingian exegesis (vide infra, e.g., pp. 106, 138, 168, 174, 182, 200), see Carole Straw, *Gregory the Great: Perfection in Imperfection*, Transformation of the Classical Heritage (Berkeley: University of California Press, 1988), 87–88. For manifestations of the idea in the Carolingian period, see de Jong, "Exegesis."

ascribed explicitly to Jews.⁸⁷ Conversely, clean flesh, for Hrabanus, is the salvific Word that was made flesh in Christ.⁸⁸

The potential for metaphorical constructions to have real effect is a phenomenon known in other domains of jurisprudence. Haig Bosmajian has proposed that the metaphors used in legal language have enormous and enduring impact on the ways in which law is applied and becomes part of the social structure.⁸⁹ The metaphors need not be embedded in the statutes themselves: influential commentaries, such as judicial opinions, can affix the metaphorical framework in the minds of subsequent interpreters of the law. In this way, intellectual frameworks outside the articulated regulations can shape the course of legal traditions; along with private law, these unseen constructs may press upon the formation of positive law.

Together, the constructs of community standards (tacit law) and techniques of allegorical exegesis converged to create a powerful discourse of religiously defined dangers to the Carolingian polity. The force of covert rules encapsulating general social sensibilities, when appropriated by those who worked with written law, could be redirected against intangible conditions and used as the basis for proposed legal actions. Although not themselves the product of legislation, pollution rules provided for jurists analogies that produced a religiously inflected understanding of guilt and offense. Amulo, Hrabanus, and those who tried Theutberga all participated in juridical discourse that admitted

⁸⁷ PL 108, *Expositiones in Leviticum*, lib. III. cols. 351–64. See Abigail Firey, “The Letter of the Law: Carolingian Exegetes and the Old Testament,” in *With Reverence for the Word: Medieval Scriptural Exegesis in Judaism, Christianity, and Islam*, ed. Jane Dammen McAuliffe, Barry Walfish, and Joseph Ward Goering (Oxford and New York: Oxford University Press, 2003), 208–11. The transformation of animals into emblems for sins by Jerome and in later medieval literature is discussed by Morton W. Bloomfield, *The Seven Deadly Sins: An Introduction to the History of a Religious Concept, with Special Reference to Medieval English Literature* ([East Lansing]: Michigan State College Press, 1952), 61–62, 79, 245–49. On animals as symbols of sin in the writing of Gregory the Great, see Straw, *Gregory the Great*, 51–52, with an excellent footnote.

⁸⁸ Firey, “Letter of the Law,” 208–09.

⁸⁹ Haig Bosmajian, *Metaphor and Reason in Judicial Opinions* (Carbondale: Southern Illinois University Press, 1992), 49–50, 57–72. In his study of the language of U.S. Supreme Court decisions, one of the metaphors he singles out is the reference made by Justice Brennan to “the marketplace of ideas.” By tracing subsequent judicial rulings regarding universities, the study reveals the expansion, development, and reification of this metaphor, so that both in law and elsewhere the analysis of the university began to be constructed upon the premises of economic models, as if the university were, really, a market, subject to the same forces, built on the same risks, and potentially regulated or controlled by the application of economic principles.

pollution, whether as an operative force or as an accepted fiction. Like Amulo, Hrabanus did not merely interpret Scripture but went on to propose specific and real legislation: both of his penitentials presented canons for the segregation of Jews and Christians.⁹⁰

The transfer of the discourse of pollution into written juridical argument distorted, however, both the rules of pollution and of jurisprudence. On the one hand, in the tacit rules of pollution, there were often neither specific individuals to find liable nor detectable injuries. On the other hand, juridical analysis fixed guilt and classified the nebulous, fluid, mysterious forces of spiritual contamination. It also extended the pollution rules to thought and belief, which by analogy to ritual pollutions could be construed as dangerous, contaminating, transmittable, unclean, and possibly instilled by demons. Devising juridical remedies for religiously conceived dangers was not feasible, for there could be no compensation rendered to the injured. The penitential option was a remedy designed to provide atonement rather than compensation.

Not only offenses but accusatory procedures as well were affected by the constructs of pollution and purgation. Carolingian sources refer to “scandal” as the basis for initiating prosecution. It was scandal, according to all three accounts of Theutberga’s confession, that brought her to public scrutiny and the sentence of purgation, and scandal that brought the nuns of Rudolf’s tale to their penitential rites. Like the nebulous conditions that were encompassed in pollution, “scandal” could operate in liminal or ambiguous circumstances when no certain charges for damage could be construed. Similarly, scandal might arise over conditions not recognised in law, such as a disturbing sexual condition, the unmitigated presence of death, or blasphemy. More than a voice of collective accusation, however, scandal had the same traits of replication and diffusion as pollution. Like pollution, it could threaten social and political integrity; like pollution, what stopped the dangerous contamination was purgation.

The purgative remedy for scandal might be construed as either legal or religious, depending upon the conditions. Scandal, as in the case of Theutberga, could operate in liminal or ambiguous circumstances and could shape its reports as either sympathetic or accusatory. If scandal held that the cause for pollution was not accidental, but somehow vol-

⁹⁰ Firey, “Letter of the Law,” 212.

untarily incurred, then the language of crime could be applied. Instances of criminous pollution could evoke the language of legal defense: there could be protestations of innocence, calls for exoneration. Even then, the use of religious rituals to remedy the unverifiable cause of scandal provided an alternative to rational adjudication of guilt or innocence, because of the capacity in pollution rules to redistribute damage. Both the bearer of pollution and those affected have been compromised, regardless of culpability. All need purification, as in the case of the polluted well. The problem and remedy are thus essentially medical in nature. With its rituals of confession and suffering, and a language that described the purging effects of these actions, penance offered remedies of cleansing and healing for the pollutions arising from sex and death and, by extension, thought and belief. The remedies could become as collective and public as the pollutions, for the rituals of confession and suffering could be both publicised and adapted to various forms of public participation.

Penance thus gained enormous political potential at a time when political unification of the empire produced rhetorical descriptions of the empire as having significance in divine history. The concept of a Christian empire to be protected against more than military threats, economic failure, or domestic unrest created an image of corporate cohesion that could be parsed into the categories of the holy and the unholy. Politics, as well as private law, exerted pressures in the Christianisation of law. Politics rests on promises, and for the governors of the Carolingian empire, the penitential promise was both awe-inspiring and costly. It called for sacrifice; it promised redemption. The promises were exemplified in a powerful image.

Purgative justice: Tears extinguish fire

Penitential remedies for public dangers had an inherently medical orientation. One of the seminal sources of inspiration for later expositors of the scheme, the *de vita contemplativa* of Julianus Pomerius (often identified in medieval sources as Prosper of Aquitaine), supplied in its exposition of sin the medical rhetoric that would govern discussion. In language echoed repeatedly by Carolingian authors, Pomerius likened sins to wounds and confessors to physicians: "But when any of our brethren reveal to us the sins which oppress them, as they show

physicians the wounds troubling them, we should endeavour with the help of God to heal them as quickly as possible to prevent their growing any worse because of the lack of attention.”⁹¹ Just as the rhetoric of pollution could extend a metaphor to social policies, so the metaphor of the physician of souls yielded prescriptions based upon analogies to medical practices.⁹² Julianus Pomerius described three stages of treatment: gentle ministrations of reprimand for those who confess, the more radical treatment of cauterisation and purgation (“cured by the fire, as it were, of friendly reproof”) for those whose sins become known without their confession, and excision of the hopelessly rotten from the body of Christians by “the knife of excommunication.”⁹³

The language of medicine, then, supplied the imagery and, hence, the treatment, for responding to the many taints of the soul. By the Carolingian period, the register of possible corruptions was extensive, ranging over pollution, crime, and spiritual failings or deviations. Specific pathogens could be fought with specific medicaments: passages from the *Pastoral Care* and the *Moralia* of Gregory the Great discussing the physiological analogues of the vices and the recommendation to “heal by contraries” were among the texts especially favoured by Carolingian authors.⁹⁴ Whatever the details of the diagnosis and its

⁹¹ Julianus Pomerius, *The Contemplative Life*, trans. Mary Josephine Suelzer, Ancient Christian Writers (Westminster, MD: Newman Bookshop, 1947), 70; “De vita contemplativa libri tres,” PL 59, col. 451 (II.7.1). For the Gregorian use of this language, see Jean Batany, “Le vocabulaire des fonctions sociales et ecclésiastiques chez Grégoire le Grand,” in *Grégoire le Grand. Colloques internationaux du Centre National de la Recherche Scientifique, Chantilly, 15–19 September 1982*, ed. Jacques Fontaine, Robert Gillet, and Stan Pellestrandi (Paris, 1986), 171–80; and also Straw, *Gregory the Great*, 204. Cf. Einar Molland, “Ut Sapiens Medicus: Medical Vocabulary in St. Benedict’s *Regula Monachorum*,” *Studia Monastica* 6 (1964): 273–96. The Carolingian penitential context is noted in Guy Devailly, “La pastorale en Gaule au IX^e siècle,” *Revue d’Histoire de l’Église de France* 59 (1973): 41. For the classic study of the conjunction of penance and healing, see Bernhard Poschmann, *Penance and the Anointing of the Sick* ([New York]: Herder and Herder, 1964).

⁹² An exceptionally detailed elaboration of the medical metaphor is in the preface to the Poenitentiale Egberti (Wasserschleben, *Die Bußordnungen*, 231). Cf. also Poen. Bigotianum (Wasserschleben, *Die Bußordnungen*, 441–45).

⁹³ *Contemplative Life*, 70. “Putres corporis partes debent ferro excommunicationis abscidi.” “De vita,” col. 451 (II.7.2).

⁹⁴ Gregory’s use of the image of *Christus medicus* healing with “remedies of likeness and unlikeness” is noted by Straw, *Gregory the Great*, 153, with a generous and useful footnote. References to healing by contraries are in the Poen. Vinniani cap. 29, Poen. Merseburgense (sermo de penitentia); an exceptionally detailed discourse on the application of the principle is in Poen. Cummeani (praef.); all in Wasserschleben, *Die Bußordnungen*, 114, 387–88, 460–62, respectively. The principle is also set forth by Hrabanus Maurus in his *Expositio in Leviticum*, PL 108, col. 353.

particular set of symptoms, however, the basic treatment was penance, with its medicinal effects of purification and purgation.

When the bishops determined that "purgation" would be the process appropriate for Theutberga and that it would be effected through public penance, they entered the shadowy border zone between medicine and law. Purgation served both as a course of treatment and an expiation, and as such it was a term and concept that provided a happy resolution to the ambivalence over whether the perpetrator of a crime was ill or malicious. In a religious context, Gregory could speak of cleansing the abscess of guilt with confession ("ut apostema reatus quod... confitendo purgetur"); in a juridical context, Isidore of Seville could include in his summary of legal terminology the definition that "purgation is when a given fact is conceded, but the guilt is removed."⁹⁵ The term retained its neutrality with respect to guilt in some contexts: the standard expression in the penitentials for the purification of women after the pollution of childbirth was "purgatio" or one of its cognates.⁹⁶

While in its multivalence purgation might seem to serve most spiritual and social needs, there lurked the inevitable need to distinguish between different types of disturbances of the divine order. One problem that had been evident already to Julianus Pomerius was that grave and minor sins had to be distinguished; Carolingian sources show continued concern that the distinction might be lost.⁹⁷ Even though

⁹⁵ Gregory, *In librum primum Regum*, cit. Straw, *Gregory the Great*, p. 218. Isidorus, *Isidori Hispalensis Episcopi Etymologiarum Sive Originum Libri XX*, ed. W.M. Lindsay, *Scriptorum Classicorum Bibliotheca Oxoniensis* (Oxford: Clarendon Press, 1911), lib. II, cap. 5.8 (vol. I, s.p.): "Purgatio est, cum factum quidem conceditur, sed culpa remouetur."

⁹⁶ Wasserschleben, *Die Bußordnungen*, 156, 213: "Mulier post partum in purgatione sit xl dies...; Mulier tres menses debet se abstinere a viro suo quando concepit, ante partum et post tempore purgationis, hoc est xl diebus et noctibus..."

⁹⁷ Julianus Pomerius, *Contemplative Life*, 57, 58: "...according to the difference in sinners the type of prescription also differs. And surely, different remedies are to be applied to sins just as the sins themselves arise from different causes. For the habit of sin entices many; others the opportunity for some temporal gain allures to sin; frailty inclines some... Since, then, men sin in so many and such very different ways, who does not understand that those whose maladies are so varied certainly cannot be cured by one and the same method?" "De vita," cols. 443–44. The widely circulated *Praefatio* to the *Collectio Dacheriana* ("de utilitate penitentiam agendam"), also used as the preface to Halitgar's penitential in some manuscripts, recognised problems in the distinction between minor and grave sins: "Quae sint autem levia, quae gravia peccata, non humano sed divino sunt pensanda iudicio... Sunt autem quaedam quae levissima putarentur, nisi in Scripturis demonstrarentur opinione graviora... Exstant tamen pro quibusdam culpis modi paenitentiae impositi, iuxta quos caeterae perpendendae sunt culpaе, cum sit facile per eosdem modos vindictam et censuram Canonum aestimare." Luc d' Achery, "Collectio Dacheriana," in *Spicilegium, sive Collectio veterum aliquot*

the integration of evils suffered (as in pollution) and evils done (as in malfeasance) in Carolingian penitential systems was remarkable, there are indications that jurists and pastors sought refinement in the classification of voluntary and involuntary conditions. A number of texts recalled Augustine's observation that "while every crime is a sin, not every sin is a crime."⁹⁸ Hrabanus Maurus made the distinction "that there are differences in sins: he who has sinned with a 'sin unto death' is an outcast (*abjectus*); he, however, who has sinned not with a 'sin unto death' but something lesser, is polluted."⁹⁹

The latent problem in the synthesis of pollution and juridical systems would be the question of moral responsibility. The initial compatibility of the two sets of rules is not surprising, as the fundamental systems of law known in the early medieval West were not oriented around the question of intent. Roman law (in both its classical and vulgar forms) treated actions and the agency, rather than the interior, of the accused as the substantial object of adjudication. Penitential law also had a history of disregarding personal or interior motivation for transgression. Agency or responsibility was often external: demons were at work, just as Amulo's Jews were cast into a condition of sin and pollution when they were possessed by demons.¹⁰⁰

Yet the Carolingian interest in the freedom of the individual will, honed in the extensive and learned debates of the early 9th century over grace and predestination, provided the impetus for locating responsibil-

scriptorum qui in Galliae bibliothecis delituerant (Paris: Apud Montalant, 1723), 510–12. For points of relation between the *Collectio Dacheriana* and Halitgar's penitential, see Raymund Kottje, *Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus: Ihre Überlieferung und ihre Quellen* (Berlin and New York: W. de Gruyter, 1980), 73, 165–66, 181–82.

⁹⁸ As cited in the *Praefatio* to the *Collectio Dacheriana*, "Interest quidem quantum; neque enim quia peccatum est omne crimen, ideo crimen etiam omne peccatum." Augustine, *Enchiridion*, ed. E. Evans in *Corpus Christianorum Series Latina* 46 (1969) pp. 49–114. XVII, 64, ll. 16–20. Cf. Poenit. Valicellanum II (Wasserschleben, *Die Bußordnungen*, 553).

⁹⁹ PL 108, Exposit. in Levit., lib. 6, col. 482: "Unde etiam ostenditur hoc, quod sint differentiae peccatorum. Qui peccaverit peccatum ad mortem, abjectus sit. Qui autem non peccat ad mortem, sed inferius aliquid, pollutus sit. ('Ex Adamantio.') Si quis nostrum peccaverit, abjectus est, etiam si non abjiciatur ab episcopo... [anima] Polluta dicitur, quae etiam si non ex integro complevit peccatum, tamen hoc ipso quod cogitavit, quod voluit, optavit, etiam si non admisit, polluta est..."

¹⁰⁰ Again, the Gregorian influence seems discernible. Cf. Sofia Boesch-Gajano, "Demoni e miracoli nei *Dialogi* di Gregorio Magno," in *Hagiographie, cultures et sociétés, IV^e–XII^e siècles. Actes du Colloque organisé à Nanterre et à Paris (2–5 mai 1979)*, Université de Paris X Centre de Recherches sur l'Antiquité Tardive et le haut Moyen Age (Paris: Études Augustiniennes, 1981), 263–81; and Straw, *Gregory the Great*, 107, 122, 135 et passim.

ity securely in the soul of the individual. Carolingian clergy operated in a climate saturated with Augustine's insistence that choices for good or evil, determined by the individual's will and reason, were the defining moments in the soul's destiny. There lay the crux of the uncertain balance between medicinal and juridical approaches to penance. Both social exigencies and the Christian view of a universal history culminating in Judgement precluded a purely medicinal approach to transgression. The readiness of authors to switch from medical to juridical rhetoric illuminates the issue. For Julianus Pomerius, it was the fact that spiritual pathologies have social as well as personal consequences that brought them into the domain of justice. His correlation of spiritual correction to medical practice continues, "... Just as morbid flesh, if not removed, impairs the health of the rest of the body by the infection it brings, so those who despise correction and persist in their infirmity, by remaining with their depraved morals in the company of good people, will infect them by the example of their own wickedness."¹⁰¹ In the next sentence, he engages juridical language: "But those whose sins escape human notice, being neither self-confessed nor exposed by others, if they have been unwilling to confess them and amend, will have God, whom they have as their witness, as their avenger also."¹⁰² The undeniably judicial aspect of penance is fully revealed in his subsequent lines: "And what do they profit in escaping human judgement when, if they persist in their evil, they will go by God's punishment into eternal torture? If, however, they become their own judges and, as though avengers of their own iniquity, here exercise the voluntary penalty of a most severe punishment against themselves, they will exchange eternal torments for temporal; and with their tears flowing from true contrition of heart they will extinguish the flames of everlasting fire."¹⁰³ The contrite heart was the final scaffold where vengeance, severe punishment, even torment, could be enacted by the living before irrevocable judgement was pronounced.

The judicial aspect of the penitential system was adumbrated in some of the prefaces to penitentials circulating in portions of the Carolingian empire. Just as the words assigned to Theutberga regarding her confession were that she would rather "confess guilt simply before men than to blush before the tribunal of the Lord, and to have eternal woe," so

¹⁰¹ *Contemplative Life*, 69; "De vita," col. 451.

¹⁰² *Ibid.*

¹⁰³ *Contemplative Life*, 69–70; "De vita," col. 451.

too the rhetoric of some of the prefaces evokes the image of the divine tribunal that is the reality shadowed by the penitential forum.¹⁰⁴ The priest, in one description of the penitential ritual, is to beseech the penitent to tell to him all the wrongs he has done, “because it is better for you to be ashamed now, here, before me alone, than later before God in that great Judgement, where the residents of heaven and earth and all those of hell shall be gathered together, where our Lord will preserve us.”¹⁰⁵ The divine tribunal might be even more immediate, in view of the requirement that sins be confessed before partaking of the Eucharist: “Indeed it is better to wait, until the heart be clean and free of scandal or envy, than to approach audaciously the tribunal of judgement, the tribunal, in fact, at the altar of Christ, lest he judge unworthy those approaching to consume his body and blood.”¹⁰⁶ Other instructions to the clergy suggest a quick rehearsal to the penitent of the narrative of crime, punishment, redemption, and justice that frames divine history:

It is good to encourage him with the healing word and to give to him the reason: how the devil through his pride fell from angelic dignity and afterward expelled man from paradise, and therefore Christ came into the world for human salvation through the womb of a virgin and after the resurrection he vanquished the devil and redeemed the world from sin, and afterward he granted the grace of baptism through the apostles, so that men would be raised up from sin; and whoever sins, if he does not do penance, will be sent to be perpetually tortured in Hell; and whoever makes a confession to priests after a committed crime will attain eternal reward; or he may be told how at the end of time He will come to judge the living and the dead and to render to each according to his works.¹⁰⁷

¹⁰⁴ “Quia tolerabilius est mihi imprudenti ac deceptae feminae coram hominibus culpam simpliciter confiteri quam ante tribunal domini erubescere atque aeternum vae habere.” Hincmar of Rheims, *De divortio*, 121. On the topos of the sinner blushing before the court, see Firey, “Blushing before the Judge: Pastoral Care and the Administration of Justice in the Carolingian Empire,” in *A New History of Penance*, ed. Abigail Firey, Brill Companions to the Christian Tradition, 14 (Leiden and Boston: Brill Academic Publishers, 2008), 173–200 (178–80).

¹⁰⁵ “Et oro te, ut mihi narres omnia, quae unquam male fecisti, quoniam melius est tibi, nunc hic coram me solo misero pudeferi, quam posthac coram Deo in magno iudicio, ubi coelicolae et terricolae, et inferi omnes congregabuntur, ubi servet nos Dominus noster.” Wasserschleben, *Die Bußordnungen*, 302.

¹⁰⁶ “Melius est enim expectare, donec cor sanum fuerit et alienum a scandalo aut invidia fuerit, quam accedere audacter ad iudicium tribunalis, tribunal enim Christi altare, et corpus suum inibi cum sanguine iudicat indignos accedentes.” Wasserschleben, *Die Bußordnungen*, 360.

¹⁰⁷ “Oportet eum exhortari verbum salutis et dare illi rationem, qualiter diabolus

Some texts also place the sinner in a judicial contest between the Devil and the just and powerful God who knows all.¹⁰⁸ In a prayer reminiscent of those offered at ordeals, the imprecation for God's mercy is, "And just as you freed Peter from the sea and the three boys from the fiery furnace, deem it thus worthy to free these, your serving-men and serving-women from the punishments of Hell and from the power of the Devil, as you forbear to punish the crimes against you and dismiss sins, so that the just and unstained may be redeemed on the day of judgement."¹⁰⁹ In the forum of confession, because God is the supreme Judge, the confessor is but an advocate for the sinner: it is common to find a prayer asking that the confessor may serve as a mediator or intercessor.¹¹⁰ The responsibilities of the confessor are grave in such a high court. There will be no outwitting the Judge: "O do you not understand, that God is just and powerful and hears all and sees all and brings forth hidden things into the open and renders according to your works."¹¹¹ Serving in God's court requires the best defense counsel for those appearing before Him. Even on the eve of sentencing, God will accept a true confession and conversion, that the sinner might live.

per superbiam suam de angelicam cecidit dignitatem et postea hominem expulit de paradiso, et proinde Christus ad salutem humanam per uterum virginis in mundum venit atque post resurrectionem et diabulum vicit et mundum de peccato redemit, et postea per apostolos baptismi gratiam tradidit, per quod hominem levaret de peccato, et qui peccasset, si poenitentiam non agebat, in infernum mitteretur perpetuo cruciando; et qui sacerdotibus dabit confessionem post crimina perpetrata, aeterna consequeretur praemia, vel qualiter in finem seculi venturus est judicare vivos et mortuos et reddere unicuique secundum opera sua." Wasserschleben, *Die Bußordnungen*, 422, 425.

¹⁰⁸ Nicole Bériou, "La confession dans les écrits théologiques et pastoraux du XIII^e siècle: médication de l'âme ou démarche judiciaire?" in *L'Aveu, antiquité et moyen-âge: actes de la table ronde organisée par l'École française de Rome avec le concours du CNRS et de l'Université de Trieste, Rome 28-30 mars 1984*, Collection de l'École Française de Rome ([Rome] Paris: École française de Rome: Diffusion de Boccard, 1986), 274.

¹⁰⁹ "Et sicut liberasti Petrum de mare et tres pueros de camino ignis, ita liberare digneris hos famulos tuos et famulas de pena inferni et de potestate diaboli, ut culpas vobis parcas et peccata dimittas, ut justi et immaculati sint redempti in die iudicii..." Wasserschleben, *Die Bußordnungen*, 553.

¹¹⁰ E.g., Poen. Pseudo-Bedae: "Domine, deus omnipotens, propitius esto mihi peccatori, ut condigne tibi possim gratias agere, qui me indignum propter tuam misericordiam ministrum fecisti officii sacerdotalis et me exiguum humilemque mediatorem constituisti ad orandum et intercedendum ad Dominum Jesum Christum pro peccantibus et ad poenitentiam revertentibus..." Wasserschleben, *Die Bußordnungen*, 251-52.

¹¹¹ "O non intelligis, quod deus justus et fortis est, vidit et audit et in palam abscondita deducit et reddit secundum opera tua." Wasserschleben, *Die Bußordnungen*, 231, 249.

Priests may not, therefore deny to anyone the opportunity to make a true confession, because God knows the secrets of all men's hearts.¹¹²

The possible divergence between human judgement and divine judgement is noted in the frequent references to the great enigma of the thief in Paradise (Luc. 23:33–43). If Susannah was the emblem of those unjustly accused, the emblem of those justly condemned by humans but by grace redeemed was that of the thief in Paradise. The thief crucified next to Jesus, from whom he received the promise that at the end of the day he would be with Christ in Paradise, was taken by exegetes to signify sinners who converted and repented at the last minute, to whom heaven would not be denied. The argument was made in the 5th century by Pope Celestine in a letter widely circulated among Carolingian jurists.¹¹³ The reference to the thief clarified the injunction not to deny penance to anyone, even (or especially) the dying: "A true conversion is possible at the last moment, because the Lord is not only the inspector of times but of the heart, just as the thief by his confession at the final hour, in one instant deserved to be in Paradise."¹¹⁴

¹¹² "Sanctus Isidorus dixit, quod spes esset hominis veram confessionem et conversionem Deo acceptam fore in extremo eius die; quoniam Salvator dixit, *Quocumque die conversus fuerit homo ad Deum, vita vivet, et non morietur*. Ideo non rejicienda vera conversio, quocumque tempore fiat, ergo sacerdoti non opus est homini genuinam confessionem denegare, quia Deus intuetur cuiuslibet hominis cogitationem et novit secreta cordium omnium hominum." Wasserschele, *Die Bußordnungen*, 319.

¹¹³ The letter, JK 369 (To the bishops of Narbonne and Vienne, *Cuperemus quidem*) is among those always found in Gallican canon law collections of the 5th and 6th centuries and is transmitted by the major reference collections used by Carolingians: the *Collectio Hispana*, the *Collectio Dionysiana*, and the *Collectio Dacheriana*. The pertinent passage, transmitted as a canon in the *Collectio Dacheriana*, is as follows [here edited for brevity]: Agnovimus enim poenitentiam morientibus denegari... Horremus, fateor, tantae impietatis aliquem reperiri, ut de Dei pietate dispenset, quasi non possit ad se quovis tempore concurrenti succurrere, et periclitantem sub onere peccatorum hominem pondere, quo se expediri desiderat, liberare... Salutem ergo homini adimit quisquis mortis praeterea tempore poenitentiam denegarit; et desperavit de clementia Dei, qui eum ad subveniendum morienti sufficere vel momento posse non credit. Perdidisset latro in cruce praemium ad Christi dexteram pendens, si illum unius horae poenitentia non juvisset. Cum esset in poena poenituit, et per unius sermonis professionem habitaculum paradisi, Deo promittente, promeruit. Vera ergo ad Deum conversio in ultimis positorum mente potius est aestimanda non tempore, propheta hoc taliter asserente: *Cum conversus ingemueris, tunc salvus eris*. Cum ergo Dominus sit cordis inspector, quovis tempore non est deneganda poenitentia postulanti, cum illi se obliget iudici, cui occulta omnia noverit revelari. D'Achery, *Collectio Dacheriana* (*Spicilegium*, 1, 527). On Celestine's decretal, see Detlev Jasper and Horst Fuhrmann, *Papal Letters in the Early Middle Ages*, History of Medieval Canon Law (Washington, DC: Catholic University of America Press, 2001), 22–26 et passim.

¹¹⁴ (Can. Greg.) cap. 37: "Si quis poenitentiam abnegit morientibus, et presbyter reus

Some texts stress that it was the thief's confession that secured his redemption: "Therefore a true confession to God by a mind in final disposition is considered better, not the duration [of faith or contrition], as the prophet notes: 'In whatever day a sinner be converted, he shall live for life.' And again: 'When you will be converted, you will have mourned, then you will be saved.' Since the Lord is the inspector of the heart at all times, penance is not to be denied to someone seeking it, since he will be obliged to appear before that judge to whom, he should know, all hidden things are revealed. And so the thief on the cross, on account of a confession in one moment, at the last hour deserved to be in Paradise..."¹¹⁵ Whether the "confession" of the thief was simply a profession of faith or a confession of sin is often ambiguous, as this exposition is used both as an argument not to deny baptism and not to deny penance to the dying.

Other texts credit his suffering alongside Christ as the critical element in the thief's salvation. By participating sympathetically, the thief entered the class of martyrs who endured torments with Christ at their sides, and who thus attained special favour in God's eyes. This formulation appears frequently, because it became embedded in a regularly cited list of the means by which sins are remitted. The 12th remission is martyrdom, "just as happened to the thief at the Passion of the Lord,

erit animarum, quia dominus dicit: *Quacunque die peccator conversus fuerit, vere vivet et non morietur*. Vera conversio in ultimis temporibus potest esse, quia dominus non solum temporibus [*sic*] inspector est, sed cordis, sicut latro in hora ultima confessione unius momenti meruit esse in paradiso." Wasserschleben, *Die Bußordnungen*, 164. According to Wasserschleben's apparatus, MS C, Paris 2123 (saec. IX) has instead of the flawed reading "temporibus" the better reading "temporis." Cp. Alcuin, *Ep.* 245, cit. Rob Meens, "Sanctuary, Penance, and Dispute Settlement Under Charlemagne: The Conflict Between Alcuin and Theodulf of Orléans Over a Sinful Cleric," *Speculum* 82 (2007): 277–300 (286).

¹¹⁵ "Vera ergo ad Deum conversione in ultimis positorum mente potius est aestimanda, non tempore, propheta hoc taliter adhibente: *in quocunque die conversus fuerit peccator, vita vivet*. Et iterum: *cum conversus fueris, ingemueris, tunc salvus eris*. Cum ergo sit Dominus cordis inspector, quovis tempore non est deneganda poenitentia postulanti, cum illi se obliget iudici, cui occulta omnia noverit revelari. [or, Cum ergo Dominus sit cordis inspector omni tempore, non est deneganda poenitentia postulanti.] Denique latro positus in cruce, propter confessionem unius momenti, hora ultima meruit esse in paradyso, Domino dicente, Amen dico tibi, hodie mecum eris in paradyso." Wasserschleben, *Die Bußordnungen*, 620, 612, cf. 621. This text appears in more or less elaborated forms: I have quoted the most full rendition. The close relation to the text of Celestine's letter, cit. supra, note 113, shows that the compilers of penitentials participated in the juridical discourse represented in the canon law of the period.

when the Saviour said to him, "Verily I say unto you, today you will be with me in Paradise."¹¹⁶

This devotional perspective on the value of mimetic suffering, however, was not the only interpretation offered for the significance of the thief's crucifixion.¹¹⁷ In other prefaces attached to penitentials, the release of the thief is rationalised with the juridical analysis that through his suffering on a cross as mandated by a judicial sentence, he had done penance. "The thief hanging on the cross to the right of Christ would have lost his reward, if he had not pleased Him with the penance of one hour, and since he was in torment [*in poena*, with the additional sense of undergoing punishment], he did penance, and through God's promise of a place in Paradise, he earned it."¹¹⁸ Suffering, then, whether construed as sympathy or punishment, is redemptive in the penitential scheme, a premise reiterated in the sixth item in the lists of means of remitting sin: affliction of the heart and body.¹¹⁹

In this, the authors of these prefaces show the strong influence of Gregory the Great, whose meditations upon the value of suffering were extensive and frequently revolved around its purgative capacity.¹²⁰ Gregory's view differed from that of Augustine, who rejected

¹¹⁶ This is at the end of a list of means of remitting sins ("quinta remissio est per confessionem peccatorum, ut quisque peccata sua confiteatur confessario suo, et ei secreta sua revelet, et deinde emendet, prout ille ei praescripserit... Undecima remissio est, ut quisque ex amore Dei illius hominis delicta remittat, qui in eum deliquerit, quoniam Salvator in evangelio suo dixit: Remitte, et remittetur vobis.) Duodecima remissio est martirium, prout latroni evenit ad passionem Domini, cum Salvator ei dixit: Verum est, quod tibi dico, nunc hodie mecum eris in regno patris mei." Wasserscheben, *Die Bußordnungen*, 342, 461, 538, 552.

¹¹⁷ For a rich and complex discussion of the application of mimesis in the spiritual constructs of Hincmar of Rheims, including extensive excavation of penitential motifs (although not that of the thief), see Morrison, "Unum Ex Multis."

¹¹⁸ (Poen. Marten.): "Perdidisset latro praemium in cruce ad Christi dexteram pendens, si illum unius horae poenitentia non juvisset, et cum esset in poena, poenituit, et per huius sermonis professionem habitaculum paradisi, Deo promittente, promeruit." Wasserscheben, *Die Bußordnungen*, 285.

¹¹⁹ (Paen. Cum.): "Sexta afflictio cordis et corporis, apostolo consolante: Dei huiusmodi hominem in interitum carnis satanae, ut spiritus salvus fiat in die Domini nostri Jesu Christi." Wasserscheben, *Die Bußordnungen*, 461. On the significance of bodily suffering in punishment, see Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1995), 41, 45–46, 67.

¹²⁰ For an excellent discussion of the complexities of the term *purgatio* with special reference to Gregory the Great, see Hasso Jaeger, "La preuve judiciaire d'après la tradition rabbinique et patristique," in *La Preuve. Première Partie: Antiquité*, vol. 16, Recueils de la Société Jean Bodin (Brussels: Éditions de la Librairie encyclopédique, 1965), 534–38.

outright the notion that the suffering of the thief propitiated God, arguing forcibly that it was not torments that make the martyr, but the merits of the case: “for if torments make a martyr, when a thief is killed, he is a martyr.” Turning to the circumstances of the Crucifixion, Augustine drew attention to the three crosses on which hung Christ and two thieves, all suffering equal punishment but distinguished by their cases. For Augustine, the salient feature of the thief who asked Christ to remember him was his faith, not the circumstances of its demonstration.¹²¹ Gregory, however, asserted boldly that there was a correlation between the thief and martyrs, and it was the torments they suffered: “For certainly we know that the bones of many martyrs have been broken in the flesh, and the persecutors of the Lord, of that thief, to whom was said, ‘today you shall be with me in Paradise,’ also had broken the bones of the other thief on a bloody cross.”¹²²

Because Gregory associated suffering with the trials and temptations of this world, he placed the thief in a penitential context. Although sustained by the virtues of faith, hope, and love, Gregory’s thief came to his cross by a crime, and was released from his cross by grace. On the cross, he could do nothing, for his hands were pinned and his feet bound; his torments left nothing free but his heart and tongue, the sites of contrition and confession.¹²³ Because the thief knew his crime,

¹²¹ C. Lambot, “Sermons complétés. Fragments de sermons perdus. Allocution inédite de S. Augustin,” *Revue bénédictine* 51 (1939): 18 (sermo 328). “Non enim facit martyrem poena sed causa. Nam si poena facit martyrem, et latro quando occiditur martyr est. Vultis noscere quia non facit martyrem poena sed causa? Tres illas cruces attendite ubi dominus crucifixus est in medio duorum latronum. Poena aequalis erat sed causa separabat quos poena iungebat. Unus ipsorum latronum cum penderet credidit domino Iesu Christo. Et ait prius pari suo—par enim ipsius alius latro insultavit domino Iesu Christo et dixit ei: *libera teipsum si filius Dei es*—et ille alter latro: *tu non times Deum*, dixit pari suo, *nos pro malis factis nostris ista patimur, iste autem sanctus Dei est*. O confiteri, quia si confitebatur non sine causa pendebat. Deinde ait ipsi domino Christo: *Domine in mente me habe dum ueneris in regnum tuum* (cf. Luc. 23:39–43). Qualis fides.” Cp. Foucault, *Discipline*, 55: “in the same horror, the crime had to be manifested and annulled.”

¹²² Gregorius Magnus, *Moralia in Job*, ed. Marcus Adriaen, CCSL, 143, 143A, 143B (Turnhout: Brepols, 1979), 1180 (lib. 23 par. 24). “Nam certe novimus quod et multorum martyrum corporaliter ossa confracta sunt, et persecutores domini, latronis illius, cui dictum est: *hodie me cum eris in paradiso* (Luc. 23:43), sicut latronis alterius in cruce crura fregerunt.”

¹²³ *Moralia*, 929–30 (lib. 18 par. 40). “In cruce clavi manus eius pedes que ligaverunt, nihil que in eo a poenis liberum nisi cor et lingua remanserat. Inspirante deo totum illi obtulit, quod in se liberum invenit, ut iuxta hoc quod scriptum est: corde crederet ad iustitiam, ore confitentur ad salutem. In corde autem fidelium tres summopere manere

he found mercy in his very death,¹²⁴ for by his truthful confession, he was cleansed of sin. Gregory added the thief to his roster of inspiring examples of penance: Mary Magdalene, David, Peter, and Zaccheus,¹²⁵ all of whom cleansed their sins with tears. It is with tears, says Gregory, that the stains of sins and polluting thoughts, likened to the pollution of menstruation, are washed away. Mingling the images of tears, the fountain of piety, the fountain of mercy, and the water of life as essential for ablution, Gregory urged his readers to consider how much we have sinned, how much we still sin, and, so that we might appear clean after these crimes, urged that we should wash “as a holocaust.”¹²⁶ While only the just merit heavenly reward, those swollen with pride, polluted by the crimes of the flesh, burned by anger, or impious in their cruelty may seek penance, and through penance seize the inheritance of the just. “God wants such a violent seizure; he wants the kingdom of heaven, undeserved by our merits, to be taken with our groans,” claimed Gregory. Meditating upon the thief, Gregory concluded that God allows his chosen to fall into errors, just as to others who have fallen into crime, if they rise up with full heart to Him, he shall offer the hope of mercy, and shall open to them through the laments of penance the way of piety.¹²⁷

virtutes testatur apostolus, dicens, nunc autem manent spes, fides, caritas. Quas cunctas subita repletus gratia et accepit latro, et servavit in cruce.”

¹²⁴ *Homiliae in Hiezechiellem Prophetam*, ed. Marcus Adriaen, CCSL, 142 (Turnhout: Brepols, 1971), 92 (lib. 1 hom. 7). “Quod latro in cruce cognovit culpam, in ipsa iam morte invenit veniam.”

¹²⁵ Peter and Zaccheus are added to Gregory’s list in *Homiliae in Evangelia*, ed. R. Étaix, CCSL (Turnhout: Brepols, 1999), lib. 2 hom. 25 capp. 9–10 (pp. 214–16).

¹²⁶ *In Hiez.*, lib. 2 hom. 8 (pp. 351–53). “Dicatur ergo: in die illa erit fons patens domus dauid habitantibus hierusalem, in ablutionem peccatoris et menstruatæ, quia apertus iam nobis est fons misericordiae redemptor noster, qui in domo dauid incarnari dignatus est, ut peccatorem lauet a peruerso opere, et menstruatam mentem diluat ab immunda cogitatione. Patet igitur fons; curramus cum lacrimis, lauamur in hoc fonte pietatis. In hoc fonte ipse quoque Dauid lotus est cum rediit ad lamenta paenitentiae post maculas grauis culpæ... In hoc fonte misericordiae lota est Maria Magdalene, quae prius famosa peccatrix, postmodum lauit maculas lacrimis, deterisit maculas corrigendo mores. In hoc fonte misericordiae coram omnibus lauit Petrus quod negauerat, quia fleuit amare. In hoc fonte misericordiae in fine suo lotus est latro, qui, semetipsum in morte reprehendens, a culpa sua ablutus est confessione ueritatis... Consideremus quanti peccatores diebus ac noctibus per lamenta in hoc fonte misericordiae lauantur, quanti post tenebras ad lucem, quanti post maculas ad munditiam redeunt. Curramus cum talibus post mortis tenebras ad aquam uitæ, consideremus quantum peccauimus, quantum cotidie peccamus, atque, ut appareamus mundi post culpas, lauamus holocaustum.” On tears as a sign of contrition in the Carolingian period, vide supra, p. 41.

¹²⁷ Gregory, *Homiliae in Evangelia*, lib. 1 hom. 20 capp. 14–15 (pp. 168–69): “Cum

The Gregorian perspective on suffering and purgation, each expressed by tears, merged medical and juridical concepts: cure and punishment became indistinct.¹²⁸ What mattered was the suffering and its redemptive potential: pain healed the wounds of sin; torment released the prisoner from culpability. Similarly mingled medical and juridical rhetoric is found in Carolingian sources: Hrabanus Maurus wrote that none should despair of the remission of sin, if they worthily do penance, for “our physician who cures is omnipotent, and the good judge who judges is highest, and nothing is impossible to God.”¹²⁹ The combination of medical and juridical roles was not limited to the penitential sphere. The premise that law is curative, and that the legislator is engaged in pastoral care, was articulated also by the emperor Justinian, who put forth in his legislation the opinion that “laws stand to human transactions in the same relationship as medicines to illnesses and the physician-legislator is to be ever on the look-out so that his remedies may be fit for ever new

uero quis uel superbia tumidus, uel carnis facinore pollutus, uel iracundia accensus, uel crudelitate impius, post culpas ad poenitentiam redit, et uitam aeternam percipit, quasi in locum peccator intrat alienum... Haereditatem iustorum, quam non tenuimus per uitam, rapiamus per poenitentiam. Vult a nobis omnipotens deus talem uiolentiam perpeti. Nam regnum caelorum rapi uult nostris fletibus, quod nostris meritis non debetur... Praestat magnam ueniae fiduciam latro ille uenerabilis, qui non inde uenerabilis, unde latro; nam latro ex crudelitate, uenerabilis ex confessione. Cogitate ergo, cogitate quam sint incomprehensibilia in omnipotenti deo misericordiae uiscera. Latro iste, cruentis manibus abstractus a fauce itineris, suspensus est in patibulo crucis; ibi confessus, ibi sanatus est... De ipsa poena criminis peruenit ad praemia uirtutis. Idcirco autem omnipotens deus electos suos in quibusdam lapsibus cadere permisit, ut aliis in culpa iacentibus, si toto ad eum corde consurgant, spem ueniae reddat, et eis per lamenta poenitentiae uiam pietatis aperiat. Exerceamus ergo nosmetipsos in lamentis, exstinguamus fletibus et dignis poenitentiae fructibus culpas quas fecimus...”

¹²⁸ Cf., e.g., the passage in *Moralia* 24.4.7: “Because we have followed the flesh through the sight of the eyes, we are tortured by that very flesh which we preferred to God’s commands. We suffer sorrow, torture, and death in it daily so that by a marvelous dispensation the Lord might convert the cause of sin into a means of punishment; so that the severity of punishment might arise from the same source as sin, so that man might be disciplined to life by the bitter suffering of that very flesh by whose prideful delight man drew near death.” Cit. Straw, *Gregory the Great*, p. 142 (with Latin text in note). As Straw (*Gregory the Great*, p. 143) summarises Gregory’s thought, “Man is purged through suffering (Mor. 24.11.33–34; Mor. 3.14.27)... As the wounds of mutability cure sin, temporal suffering brings eternal joys... Such also is the practice of medicine, curing with like and unlike remedies, often “wounding to heal” (Mor. 26.47.87).”

¹²⁹ “Nec enim illi desperanda est remissio, qui in diuino cultu aliquid delinquit, sed magis speranda uenia, si digne paeniteat. Omnipotens est noster medicus qui curat, summeque bonus iudex qui iudicat, nihilque impossibile apud Deum.” Hrabanus Maurus, “Epistolae,” ed. E. Dümmmler, MGH, *Epistolae* [hereafter Epp.] V (Berlin: Weidmannos, 1899), 508 (Ep. 54).

turns which illness is likely to take.”¹³⁰ Similarly, Pope Leo the Great, in clarifying the rights of those despoiled of property, noted that “the medicine of justice should be applied to these wounds.”¹³¹

The ambiguity of the remedy of purgation was well matched to the ambiguities of pollution and moral culpability. The strength of a jurisprudence that synthesised religious and legal processes was that it could support decisions framed by diverse unwritten taboos, statutory decrees, and biblical exegesis. It should also be recalled that many judges in the Carolingian empire were not trained jurists, and so broader sets of rules also were likely well-suited to judicial fora not controlled exclusively by jurisprudential experts. Ultimately, however, the absence of distinction between medicine and law in the rhetoric of Christianised jurisprudence would produce problems in the determination of jurisdiction and authority. What was within the prerogative of the patient? What care must be provided to the criminal? By whom, and how? And is pastoral care really a juridical enterprise, or is it intended to position the sinner as a just person in the future?

The therapeutic model of punishment, in which guilt was purged through suffering and in which the interior condition of the culprit was a matter of primary concern, emerged as a response to hazards that threatened the religious condition of the polity. Although based upon analogies to medical models, both the danger and remedy were intrinsically political and opened up new areas of public law, new opportunities for prosecution, and new meanings of punishment. Both pollution and purgation were reconceived by literate clerics educated in specialised techniques of biblical exegesis, and both processes offered Christian models for therapeutic prosecution and for redemption. Implementation of such models depended, however, upon popular support, institutional capacity, and effective governors. The story of the obstacles and objections impeding the development of penitential jurisprudence and the role of Carolingian imperial power in overcoming them is the subject of the next two chapters.

¹³⁰ Justinian, Nov. 111.pr.; cit. Giulio Silano, “Of sleep and sleeplessness: The Papacy and Law, 1150–1300,” in *The Religious Roles of the Papacy: Ideals and Realities, 1150–1300*, ed. Christopher Ryan, Papers in Mediaeval Studies, 8 (Toronto: Pontifical Institute of Mediaeval Studies, 1989), pp. 343–61. (p. 361).

¹³¹ Cit. Pseudo-Isidore, Praefatio, in Robert Somerville and Bruce Clark Brasington, trans., *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1245*, (New Haven [Conn.]: Yale University Press, 1998), 86.

CHAPTER THREE

AUTHORITY AND PIETY

The contrite heart was absent, or at least not prominent, in the discourse in Francia about law and penance prior to Charlemagne's alliance with the episcopate. The compression of public interest and divine justice into the small space of the heart took place under the weight of imperial government. Perhaps paradoxically, increased imperial hegemony over peoples and territories was accompanied by deeper religious probes into the souls of those within the empire's bounds, as will be discussed in the subsequent chapter. The present chapter surveys the chronology of the use of penance and confession as elements of religious jurisprudence and examines the larger context of popular piety—insofar as it can be perceived—in order to determine what sort of precedents for penitential orientation might have already been present before the programme of religious education developed during Charlemagne's reign. Such enquiries require attention not only to clerical instruction but also to popular appropriation and elaboration of received doctrine, again, either before imperial intervention or in regions governed by bishops seemingly less well connected to the imperial court.

The absence of documentation is a well-known obstacle to analysis of popular piety in the early Middle Ages, and these pages attempt a somewhat oblique approach both to popular piety and to the question of instructional and disciplinary authority exercised by bishops of the late 8th and early 9th centuries, by focussing on episcopal accusations of heterodoxy. Those accusations reveal something about the scope and tenor of religious discourse beyond the technical biblical exegesis that dominates in the surviving evidence; they decry alternative views of the road to redemption. They also indicate that episcopal perspectives on the exercise of pastoral and juridical authority changed between the mid-8th and mid-9th century. To trace some of the changes, this chapter examines two episcopal legal actions that were conceived as protecting Christians from the dangers that unorthodox ideas might pose to their salvation. One case originated in the mid-8th century in "Germania" and was prosecuted by the archbishop of Mainz; the other is the venture of the bishops of Lyon in the mid-9th century to

obtain legislation to segregate Jews and Christians, discussed in part in the previous chapter. The similarities and differences in the two cases illuminate the changing juridical opportunities and techniques available to bishops as kingdoms became empire; they show too why pastoral management of popular piety was also crucial for the development of imperial “penitentialism.”

The patterns in juridical and pastoral change in the Carolingian era have been masked by a dominant historiographical account of the development of penance in the medieval West. Disproportionate attention has perhaps been given to the insular (and thus putatively monastic) origin of “private penance,” i.e., the individual undertaking of mortification for sins under the guidance of a personal confessor after a private confession, which has often been presented as distinct from the rituals of public penance known from late antiquity. As has been seen in the first chapter, in the Carolingian period, secret confession and public prosecution were not mutually exclusive, and public confession might be demanded for sins tallied in the penitential literature as susceptible to remedy by private purgations.¹ Before debates over the secrecy or publicity surrounding confession and penance crystallised in the mid-9th century, however, jurists were engaged with problems related to the exercise of authority.

How penance became an important instrument in the exercise of episcopal and sacerdotal authority is an issue that has been perhaps unnecessarily complicated by modern attention to the insular formation and dissemination of “private” penitential practices (voluntary, secret, repeatable confession and penance for minor sins) in the Merovingian period by “Irish monks” (sometimes noted as “Irish and Anglo-Saxon

¹ See also Mayke de Jong, “What Was Public About Public Penance? *Paenitentia Publica* and Justice in the Carolingian World,” in *La Giustizia nell’Alto Medioevo (secoli IX–XI), 11–17 aprile 1996*. Settimane di Studio del Centro italiano di Studi sull’alto medioevo, 44. 2 vols. (Spoleto: Centro italiano di Studi sull’alto medioevo, 1997), 2:863–904; Guy Devailly, “La pastorale en Gaule au IX^e siècle,” *Revue d’histoire de l’Église de France* 59 (1973): 23–54 (esp. 40–44); Robert Folz, “La pénitence publique au IX^e siècle d’après les canons de l’évêque Isaac de Langres,” in *L’encadrement religieux des fidèles au Moyen-Age et jusqu’au Concile de Trente: La paroisse, le clergé, la pastorale, la dévotion. Actes du 109^e Congrès National des Sociétés Savantes, Dijon, 1984: Section d’histoire médiévale et de philologie*, 1 (Paris: C.T.H.S., 1985), 331–43. For background on early medieval views of the compatibility of penitential ministration to the interior of the culprit and imposition of public penance, see Jacques Fontaine, “Pénitence publique et conversion personnelle: L’apport d’Isidore de Séville à l’évolution médiévale de la pénitence,” in *Revue de Droit Canonique* 28 (1978): 141–56.

missionaries") on the Continent.² While the intent of this explanation was to posit that the devotional practices of the laity originated in monastic practices, its historiographical consequence was to disconnect episcopal and sacerdotal authority from the administration of penance and to locate early medieval penance primarily in a landscape of monastic ideals. Furthermore, the presentation of penance as an ascetic exercise of self-improvement has, until recently, distracted scholars from consideration of the institutional aspects of penitential administration.

Material for investigating the exercise of institutional authority in the 8th century is available in the unusually ample corpus of writings by a man often considered a quintessential insular missionary, Archbishop Boniface, who worked for years in northeastern Francia (the areas

² The association of private penance with insular monks and missionaries has become such a commonplace, and so few works fail to record it, that description of its place in the scholarly record is impracticable. Among the most influential examples in the English language scholarship, see Allen J. Frantzen, *The Literature of Penance in Anglo-Saxon England* (New Brunswick, NJ: Rutgers University Press, 1983), 19–60, which devotes a chapter to review of historiography on "Early Ireland and the Origins of Private Penance." Not known to Frantzen was an important reassessment of the problem published the year before his book appeared: Kate Dooley, "From Penance to Confession: The Celtic Contribution," *Bijdragen: Tijdschrift voor Filosofie en Theologie* 43 (1982): 390–411. In *Literature of Penance*, however, Frantzen wrote, "An argument which minimises the impact of the Frankish penitentials requires a rejoinder not simply because it controverts received opinion but because its historical implications are misleading. Such an argument artificially separates the penitentials from canonical texts to which they are clearly related; exaggerates the Frankish reaction to them by exaggerating their "insular"—chiefly Irish, but also Anglo-Saxon—characteristics; and seriously underestimates a Frankish tradition of penitential texts at least strong enough to equip the tenth-century Anglo-Saxons for the revitalisation of their own penitential system" (pp. 409–10). The idea that "private" penance had insular origins rests on the medieval ascription of some penitentials to authors with Irish names, who were subsequently matched by modern scholars to saints commemorated in Irish annals. The authenticity and contemporaneity of the annal entries for the 6th and 7th centuries, in which these names occur, has been the subject of extensive debate: see now the very important work by Daniel P. McCarthy, *The Irish Annals: Their Genesis, Evolution and History* (Dublin: Four Courts Press, 2008), who inclines to the view that unless demonstrably introduced retroactively, early entries may be considered trustworthy (p. 159, referring to entries prior to A.D. 550). It should be noted that McCarthy posits, however, that between A.D. 550 and 740 the text of the annals was maintained at Iona, with a major "malevolent" revision in 727 that altered ecclesiastical entries (pp. 137–51, 163–67), only in 740 to be "precipitately removed from Iona to Ireland, probably in irregular circumstances" as part of his account of the many strata comprising the annalistic texts in their current form. Many questions remain to be answered about the ascriptions of surviving penitentials to Irish authors—identified in most instances only by single, common names—in Carolingian manuscripts, especially in light of the absence of helpful Merovingian testimony.

known as Austrasia, Franconia, Bavaria, Thuringia, and a portion of Saxony). In letters both to and from him are clues to Boniface's knowledge of law, to his perspectives on penance, and to the limits of his authority. That evidence complements conciliar records of a case he brought for synodal resolution, which merits notice for its glimpses into both the judicial and pastoral contexts of penitential practices before imperial intervention.

The prosecution of heresy, c.750: The little crosses

A curious but clearly vexing situation on the northeastern frontiers of the Frankish kingdom was reported in a sequence of mid-8th century councils.³ In the account of a council convened in 742 by Carloman, "prince of the Franks," archbishop Boniface of Mainz and some of his clergy recorded the ominous appearance of false priests. As a matter of clerical discipline, the council announced its intentions to deprive them of their offices and income, and to compel them to do penance.⁴ The larger implications of the reported problem and solution are signalled in both subsequent events and references to "false priests," a term that in 8th- and 9th-century parlance carried connotations of apocalyptic signs. "False priests" are also noted in the written acts of a council of clergy and nobility held two years later in Soissons, under the sponsorship of Pippin, "prince of the Franks." The acts of Soissons reported that a heresy had arisen among the people, and its proponent Adalbert had been publicly condemned by 23 bishops and clerics with the consent of the prince "and the people" so that more of the people should not perish through deception. Little more information is given, except that Adalbert had erected little crosses (*cruciculae*) throughout the parish; these, the council decreed, were to be burnt.⁵ A quite extensive account

³ Conc. in Austrasia habitum q.d. Germanicum (a.742), Conc. Suessionense (a.744), Conc. Romanum (a.745), all in *Concilia Aevi Karolini (I) [742-842]*, ed. Albert Werminghoff, Monumenta Germaniae Historica [hereafter MGH] Concilia [hereafter Conc.] II, 1 (Hanover: Hahnsche Buchhandlung, 1906), 1-4, 33-44.

⁴ "Falsos presbiteros et adulteros vel fornicatores diaconos et clericos de pecuniis aecclesiarum abstulimus et degradavimus et ad poenitentiam coegimus." Conc. Germanicum (742), MGH Conc. II, 1, p. 3.

⁵ Cap. II: "Propterea nos...decrevimus, ut annis singulis synodo renovare debeamus...ut heresis amplius in populo non resurgat, sicut invenimus in Adalberto heresim, quem publiciter una voce condempnaverunt XXIII episcopi et alii multi sacerdotis cum consensu principis et populi; ita condempnaverunt ipsum Adalbertum ut amplius

is given in the records of the next year's council at Rome, indicating an appeal of the case to the Apostolic See. Bishop Boniface, who had brought the initial charges in Francia, was named as the plaintiff. The priests Adalbert and Clement, although deprived of their ecclesiastical status and remanded into custody, refused to do penance and continued to seduce the people. Boniface's report, rich in verbal allusions to the Apocalypse, included the details that in addition to dedicating oratories (according to Boniface, in Adalbert's own honour), Adalbert made little crosses and shrines in fields, at fountains, or wherever he was, and celebrated there with public prayers, so that multitudes gathered in those places and deserted the established churches and showed contempt for their bishops.⁶ Public welfare was at stake, and Boniface, determined to prosecute Adalbert as a heretic, sought papal aid so that the people whom he was striving to correct would not chase after the fables of heretics and empty wonders and signs of a precursor of the antichrist.⁷

The battle over the little crosses and associated worship was, of course, linked to the problem of authority and legitimacy, as signified by cultic gestures.⁸ Adalbert seems to have associated his devotions

populus per falsus (ms. V falsos) sacerdotes deceptus non pereat." Cap. VII: "Similiter constituemus, ut illas cruciculas (mss. crucilias, cruciculae), quas Adalbertus per parochia plantaverat, omnes igne consumantur." Conc. Suessionense (744), MGH Conc. II, 1, pp. 34, 35.

⁶ "...Bonifatius episcopus... in provincia Francorum synodum aggregasset et repersisset illic falsos sacerdotes, hereticos et scismaticos, id est Aldebertum et Clementem, sacerdotio privans una cum principibus Francorum retrudi fecit in custodiam. Illi autem non in paenitentia degunt, ut iudicatum est, sed e contrario adhuc populum seducent..." The oratories and little crosses are noted in the passage, "Postea in proprio honore suo dedicavit oratoria vel, ut verius dicam, sordidavit. Fecit cruciculas et oratoriola in campis et ad fontes vel ubicumque sibi visum fuit et iussit ibi publicas orationes celebrare, donec multitudines populorum, spretis ceteris episcopis et dimissis antiquis aeclesiis, in talibus locis conventus celebrabant..." Conc. Romanum (745), MGH Conc. II, 1, pp. 38–39.

⁷ "Maximus tamen mihi labor fuit contra duos hereticos pessimos et publicos et blasphemos contra Deum et contra catholicam fidem... Contra istos, obsecro apostolicam auctoritatem, quod meam mediocritatem defendere et adiuvere et per scripta vestra populum Francorum et Gallorum corrigere studeatis, ut hereticorum fabulas et vana prodigia et signa precursoris antikristi non sectantur..." Conc. Romanum (745), MGH Conc. II, 1, p. 38.

⁸ For discussion of the historiographic romanticisation of Adalbert, see Nicole Zeddies, "Bonifatius und zwei nützliche Rebellion: Die Häretiker Aldebert und Clemens," in *Ordnung und Aufruhr im Mittelalter: Historische und juristische Studien zur Rebellion*, vol. 70, *Ius Commune, Sonderhefte: Studien zur Europäischen Rechtsgeschichte* (Frankfurt am Main: Vittorio Klostermann, 1995), 225–26.

(which, Boniface claimed, included offering his own hair and nails for veneration) with relics of St. Peter.⁹ While veneration of St. Peter was in fact common in the Merovingian religious environment, the report of Adalbert's association with the cult appears to have been a successful ploy to ruffle papal feathers. The Roman council's condemnation of Adalbert notes his false appropriation of Petrine authority when he called himself, according to Boniface, an apostle (*et quia se apostolum censuit nominare*).¹⁰ The role of St. Peter, whom the audience would know as the keeper of the keys with the power to loose and bind from sin, in Adalbert's celebrations seems connected to the assertion that people came to Adalbert, prostrated themselves, and sought to confess their sins.¹¹ The words Boniface alleged Adalbert spoke in absolution have a striking relation to the evolving discourse about the secrets of the heart known only to God: "I know all your sins, because all your secrets are known to me; there is no need to confess."¹² Again, this would seem to be part of Boniface's case that Adalbert was claiming

⁹ "Ungulas suas et capillos dedit ad honorificandum et portandum cum reliquiis sancti Petri principis apostolorum." Conc. Romanum (745), MGH Conc. II, 1, p. 39.

¹⁰ "Universum concilium dixit: 'Aldebertus, cuius nobis actus et nefaria commenta relecta sunt, et quia se apostolum censuit nominare et capillos et ungulas suas populis pro sanctualia tribuebat... sit ab omni officio sacerdotali alienus...'" Conc. Romanum (745), MGH Conc. II, 1, p. 43. On the prevalence of Petrine dedications in 8th-century Francia, see J.M. Wallace-Hadrill, "A Background to St. Boniface's Mission," in *England Before the Conquest: Studies in Primary Sources Presented to Dorothy Whitelock*, ed. Peter Clemoes and Kathleen Hughes (Cambridge: Cambridge University Press, 1971), 37–38.

¹¹ "...venienti enim populo et prostrato ante pedes eius et cupienti confiteri peccata sua..." Conc. Romanum (745), MGH Conc. II, 1, p. 40. Boniface's own episcopal oath to Gregory II was phrased as an oath to St. Peter, prince of the Apostles, to his successor Gregory, and to the church to which the power of binding and loosing had been given by God: *Die Briefe des heiligen Bonifatius und Lullus*, ed. Michael Tangl, MGH, Epistolae Selectae 1 [hereafter *Die Briefe*] (Berlin: Weidmannsche Buchhandlung, 1916), 28–29. Whether Boniface would have conceived of the power of the keys as the power of absolution is not entirely clear (vide infra, pp. 166, 184, 218), but for patristic formulation of the idea, see François Russo, "Pénitence et excommunication: Étude historique sur les rapports entre la théologie et le droit canon dans le domaine pénitentiel du IX^e au XIII^e siècle," *Recherches de science religieuse* 33 (1946): 432–44. The classic study of the power of the keys is Ludwig Hödl, *Die Geschichte der scholastischen Literatur und der Theologie der Schlüsselgewalt*, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters (Münster Westf.: Aschendorff, 1960).

¹² "Tum demum, quod maximum scelus et blasphemia contra Deum esse videbatur, fecit: venienti enim populo... dixit: 'Scio omnia peccata vestra, quia mihi cognita sunt occulta vestra. Non est opus confiteri; sed dimissa sunt vobis peccata vestra praeterita. Securi et absoluti revertimini ad domos vestra cum pace.'" Conc. Romanum (745), MGH Conc. II, 1, p. 40. On the secrets of the heart, vide supra, pp. 20, 47, 49–51, 56, 104.

divine powers beyond his prerogative, but for Boniface to choose as a contentious point knowledge of secret sin suggests that practices of confession and penance were already volatile issues in relations between the laity, the lower clergy, and bishops.

Before pursuing the question of the content of Adalbert's teachings and their implications for the landscape of pastoral care, it is useful to consider how Boniface construed ecclesiastical authority, with respect to the hierarchy of the Church, pope to priest, with respect to laity, and with respect to written law. As will be seen in the next chapter, subsequent decades saw creative initiatives to standardise penitential practices and to strengthen the authority of clerics over their flocks. In the mid-8th century, however, the capacity of the ecclesiastical judicial system to handle even problems within the clerical ranks was limited, as can be seen in Boniface's administration of his see. The scope of Boniface's episcopal authority was shaped by his understanding of canon law, the political pressures surrounding him, his disconnection (even disaffection) from the clergy and juridical culture of Francia, and his limited appreciation of penance as a pastoral device.

Israel in goatskins: Boniface and the limits of ecclesial jurisdiction

At the time that he made his complaints against Adalbert and Clement, Boniface was an experienced ecclesiastical campaigner who had attempted to secure his ties both to Carolingian royal courts and the papal curia, and who had held the office of archbishop for ten years. He had appeared in 723, perhaps for the second time, at the court of Charles Martel, then royal mayor, with an introduction from Pope Gregory II, who had made him bishop the previous year in order that he might suitably instruct "the German peoples and various nations" in correct doctrine.¹³ Papal sanction and Charles's interests coincided,

¹³ Gregory II to Boniface, Ep. 12: "that you may go forth to peoples who are still in the bonds of infidelity." *The Letters of Saint Boniface*, trans. Ephraim Emerton, Records of Civilization, Sources and Studies [hereafter *Letters*] (New York: Columbia University Press, 1940), 33; "to the German peoples dwelling on the eastern side of the Rhine, fettered by pagan errors, many of them still lost in the darkness of ignorance." *Letters* 45; "we have not failed to write to the Thuringians and the people of Germany... we have enjoined upon them to organize bishoprics and found churches." *Letters* 52. For a concise and helpful discussion of the politics and geographies of Boniface's papal commission, see Rosamond McKitterick, "England and the Continent," in *The New Cambridge Medieval History*, vol. 2: c.700–c.900, ed. Rosamond McKitterick (Cambridge: Cambridge University Press, 1995), 72–73. For valuable discussion of recent scholarship

and Boniface proceeded to the region where Charles sought to contain the power of the local nobility, the Agilolfings, with the intent of establishing “churches and bishops.”¹⁴ Encountering a situation which he viewed as requiring considerable correction, Boniface sought the greater authority that would be available to him as archbishop. Nine years after his elevation to the episcopacy, in 732 he was made archbishop by Gregory II’s successor, Gregory III.

Boniface’s care to secure the highest ecclesiastical status for himself reflects the extent to which the churches in Thuringia, Hesse, and Bavaria were already established and staffed by clergy he sought to direct or dismiss.¹⁵ Scholars have long recognised that Boniface’s protests against heathen practices and degenerate Frankish clergy were to some degree the passionate rhetoric of a man on a mission, but not necessarily that of a missionary in the heart of deep heathendom.¹⁶ There remains, nevertheless, considerable room for interpretation in modern descriptions of the organisation and condition of the religious

on Boniface, see Rudolf Schieffer, “Neue Bonifatius-Literatur,” *Deutsches Archiv für Erforschung des Mittelalters* 63 (2007): 111–23.

¹⁴ On the politics of the enterprise, see Theodor Schieffer, *Winfrid-Bonifatius und die christliche Grundlegung Europas* (Freiburg: Herder, 1954), 156–85. An important assessment and revision of Schieffer’s work is Timothy Reuter, “Kirchenreform und Kirchenpolitik im Zeitalter Karl Martells: Begriffe und Wirklichkeit,” in *Karl Martell in seiner Zeit*, ed. J. Jarnut, U. Nonn, and M. Richter, Beiheft der Francia, 37 (Sigmaringen, 1994), 35–58, who rightly cautions against imagining an organised effort of “church reform.”

¹⁵ Intelligent discussion of the interest in strengthening diplomatic ties between the duke of Bavaria, Theodo, and the papacy during the pontificate of Gregory II, and in particular of the intent to build the Bavarian ecclesiastical hierarchy, is in Thomas F.X. Noble, *The Republic of St. Peter: The Birth of the Papal State, 680–825* (Philadelphia: University of Pennsylvania Press, 1984), 26–27. See also the very useful discussion of the regional intensity of Christianisation and the power of local families in Ian Wood, “Before or After Mission: Social Relations Across the Middle and Lower Rhine in the Seventh and Eighth Centuries,” in *The Long Eighth Century*, ed. Inge Lyse Hansen and Chris Wickham (Leiden: Brill Academic Publishers, 2000), esp. 151–52, 156–57, 164–66.

¹⁶ Zeddies, “Zwei nützliche Rebellen,” 221–26. The sobriquet “Apostle of the Germans” for Boniface was identified as an early modern term, attested in 1582, in the classic study of the Bonifatian enterprise, Schieffer, *Winfrid-Bonifatius und die christliche Grundlegung Europas*, 310, note to pp. 283 ff., whose comment was expanded by Hans Ulrich Rudolf, *Apostoli gentium: Studien zum Apostelepitheton unterbesonderer Berücksichtigung des Winfrid-Bonifatius und seiner Apostelbeinamen* (Göppingen: A. Kümmerle, 1971), 145–48. A thorough and important study of the historiographic inclination to depict Merovingian society as riddled with paganism and excellent review of the sources is the chapter by Yitzhak Hen, “Superstitions and Pagan Survivals,” in *Culture and Religion in Merovingian Gaul, A.D. 481–751*, Cultures, Beliefs, and Traditions, 1 (Leiden and New York: E.J. Brill, 1995), 154–206.

environment in these regions. Scholars who have studied Boniface and his partly Anglo-Saxon cohort in these regions are puzzled by the mixed perspectives in the sources regarding the purpose of Boniface's relocation to the northeastern regions of Francia known as Austrasia.¹⁷ Popes Gregory II and III seem to have pictured him as an evangelist among infidels. Except when writing to popes, however, Boniface's own letters show few traces that he was operating in anything other than a Christian and ecclesially organised milieu. Boniface's correspondents in England, even when one takes into account the formality of early medieval letter-writing, are oddly silent with regard to the ambitions and experiences of their "missionary" brother. An even more perplexing lacuna in the evidence is the complete absence of correspondence between Boniface and his Frankish ecclesiastical colleagues: there is thus little or no testimony about Boniface and his doings other than his own, supplemented with occasional glimpses provided by correspondents with no first-hand knowledge of his circumstances.

¹⁷ The copious literature on Boniface, too vast to be surveyed here, displays a range of explanations for his relocation. A prominent historiographic idea is that separation from one's homeland was a devotional exercise in the early Middle Ages. This analysis, focussing not on the destinations of pilgrimage but on the process of detachment, was presented in the seminal work of Friedrich Prinz, *Frühes Mönchtum im Frankenreich: Kultur und Gesellschaft in Gallien, den Rheinlanden und Bayern am Beispiel der monastischen Entwicklung (4. bis 8. Jahrhundert)* (Wien: Oldenbourg, 1965). After frequent reiteration, it has recently been developed with special reference to Boniface and his associates by Stefan Schipperges, *Bonifatius ac socii eius: Eine sozialgeschichtliche Untersuchung des Winfrid-Bonifatius und seines Umfeldes, Quellen und Abhandlungen zur mittelhochrheinischen Kirchengeschichte* (Mainz: Selbstverlag der Gesellschaft für Mittelrheinische Kirchengeschichte, 1996), 202–07, who links pilgrimage (*peregrinatio*) with mission (*praedicatio*), (pp. 207–18). Prinz's work, however, was effectively challenged by Arnold Angenendt, *Monachi peregrini: Studien zu Pirmin und den monastischen Vorstellungen des frühen Mittelalters*, Münstersche Mittelalter-Schriften (Munich: W. Fink, 1972). Other authors stress the political interests of both secular nobles and the papacy in encouraging Boniface to go to Bavaria and alter the ecclesiastical landscape: cf. Noble, *Republic*, 61–65; Josef Semmler, "Bonifatius, die Karolinger und 'die Franken,'" in *Mönchtum, Kirche, Herrschaft, 750–1000*, ed. Dieter R. Bauer, et al. (Sigmaringen: J. Thorbecke, 1998), 3–50; Wallace-Hadrill, "Background"; and Zeddies, "Zwei nützliche Rebellen." Detailed information on the changing political landscape of the region is in Heinz Joachim Schüssler, "Die fränkische Reichsteilung von Vieux-Poitiers (742) und die Reform der Kirche in den Teilreichen Karlmanns und Pippins. Zu den Grenzen der Wirksamkeit des Bonifatius," *Francia* 13 (1985): 47–112; the role of the papacy in 8th- and 9th-century Francia is examined by Wilfried Hartmann, "Zur Autorität des Papsttums im karolingischen Frankenreich," in *Mönchtum, Kirche, Herrschaft*, ed. Bauer, et al., 113–32. The role of Boniface's successor, Lull, in shaping the memory of Boniface as martyr and missionary is discussed by James Palmer, "The 'Vigorous Rule' of Bishop Lull: Between Bonifatian Mission and Carolingian Church Control," *Early Medieval Europe* 13 (2005): 249–76.

The obscurities that mask the Bonifatian enterprise have allowed the development of considerable scholarly speculation, including, at times, assumptions regarding penitential administration under his regime. Despite the account of Adalbert's publicly preached absolution in response to the publicly performed general confession offered by his followers, Boniface's place in studies of penance has instead been shaded by modern perceptions of the novelty of Boniface's pastoral work in Saxony, and by his Anglo-Saxon origin and schooling. The attribution in the manuscripts of some of the penitentials to luminaries of the Anglo-Saxon church, such as Theodore, Egbert, and Bede, led scholars to hold that the earliest penitentials were of Anglo-Saxon provenance as well as Celtic. It has always been a problem, however, that the contemporaries of Anglo-Saxon and Irish monks or clerics rarely remarked upon their authorship of penitential texts.¹⁸ That Boniface was both Anglo-Saxon and imbued with pastoral zeal made him a convenient historiographic vehicle for the transport of the penitentials from the Insular to the Frankish realms, a role assigned also to Irish monks, such as Columbanus, whose hagiographers cast them as missionaries and to whom penitentials were later ascribed. Readers of the extensive Bonifatian correspondence may find it perplexing that a cleric with such pronounced sentimental ties to his Anglo-Saxon past, such continuing engagement with Anglo-Saxon bishops, monks, and nuns on matters of spiritual and pastoral import, and such concern for the reform of a religious environment he perceived as tottering on the edge of damnation, should mention penance so rarely, and only in instances of egregious clerical malfeasance.¹⁹

As a tool of ecclesiastical discipline, law rather than penance seems to have commanded Boniface's attention. His letters suggest that once invested with episcopal authority, Boniface became preoccupied with correct application of canon law and cognisant of differing interpretations of its content. Quite soon after attaining archepiscopal status,

¹⁸ An excellent and concise review of the historiography and of the penitentials is in James F. Kenney, *The Sources for the Early History of Ireland: Ecclesiastical: An Introduction and Guide* (New York: Octagon Books, 1966), 238–46.

¹⁹ For evidence of Boniface's continued dedication to a specifically Anglo-Saxon ecclesiastical past, one may point to his requests to correspondents for the writings of Bede and the letters of Gregory the Great to Augustine, missionary to the Anglo-Saxons. *Die Briefe*, 57, 159. See Jasper and Fuhrmann, *Papal Letters*, 72–73. See also Lull's continuation of the practice of requesting Anglo-Saxon works: Palmer, "Bishop Lull," 256–57.

Boniface was vexed by a case that, to judge by his repeated queries, he found difficult to put to rest. In 735 he wrote to the bishop of Whithorn (Scotland) regarding the marriage of a man to a widow whose child was his godchild. Although he had encountered those who claimed the marriage to be prohibited, Boniface had never heard that Christian sponsorship establishes a bond equated to a kin-tie. In seeking the bishop's advice, Boniface went to some effort to affirm that he had the education to have arrived at a *prima facie* opinion but that he also now sought expert confirmation: "Nor have I ever seen it mentioned by the fathers, in the ancient canons, nor in the decrees of the popes, nor by the Apostles in their catalogue of sins. If you have found anywhere a discussion of this subject in ecclesiastical writings kindly inform us and let us know also your own opinion."²⁰ Boniface's comments not only seem to show a man intent upon determining correct legal precedent and practice but also convey that he may have been inadequately prepared to decide matters of the law when confronted with differing views of priests "throughout Gaul and Frankland."²¹

Boniface's unease about the case seems to have deepened as he began to view the opinion of the Franks as "Roman." In two other surviving letters to English correspondents, he ceased to designate his opponents as "the priests of Gaul and Francia" but referred to them, instead, as "the Romans." Writing to his fellow archbishop Nothelm of Canterbury, he gave a quite detailed account of what he had gleaned: "The Romans declare that this is a sin, even a capital sin, and say that in such cases a divorce should take place. They say that under Christian emperors, such a marriage was punishable by death or by perpetual exile. If you find that this is accounted so great a sin in the decrees of catholic fathers or in the canons or even in Holy Writ, pray let me know it, so that I may understand and know what is the authority for such an opinion."²² Not only the precept, but also questions of documentation and authority troubled Boniface: "kindly search the records to find out by what authority this is held to be a capital crime among the Romans.

²⁰ *Letters*, 63; *Die Briefe*, 57–58. On the problem of the consanguinity created by godparenthood, see the important discussion in Joseph H. Lynch, *Godparents and Kinship in Early Medieval Europe* (Princeton, NJ: Princeton University Press, 1986), 242–57, largely devoted to this passage.

²¹ "Sacerdotes per totam Franciam et per Gallias"; *Letters*, 61; *Die Briefe*, 56.

²² *Letters*, 41; *Die Briefe*, 57–58.

If you find in ecclesiastical writings any discussion of this sin, please inform me of it at once.”²³ It seems to have been the Roman precedent for the rejection of a godparent’s union with a godchild’s mother that gave Boniface pause.

These letters reveal Boniface’s concern that legal opinions should rest upon authoritative texts that could be verified and authenticated. The archives in Rome were a touchstone for authenticity for Boniface; his letter to Nothelm indicates that even the prized correspondence of Pope Gregory the Great to Augustine, missionary to the English, required further validation before he would be at ease, “for the registrars [*scrinarii*] say that it is not to be found in the archives of the Roman church among the other documents of the aforesaid pope.”²⁴ Further, it would seem that the Frankish jurisprudence that Boniface found unfamiliar had evolved into a science more complex than mere collection and recognition of a repository of texts and had encompassed a matrix of memory and shaded readings. The learned disputes that (as argued in the previous chapter) left traces in the extant penitentials are consonant with the training in hypotheticals, textual analysis, and precedents that seem to have characterised Frankish juridical training. The signs that Boniface entertained a strict adherence to canon law texts of verifiably Roman origin or association complicates the modern scholarly depiction of him as a conduit for “unauthorised” Insular penitentials.²⁵ If such penitentials were studied in mid-8th-century Austrasia, either they were not perceived by Boniface as peculiarly insular or unauthorised or, if peculiar and unauthorised, they were not likely to have been used in Boniface’s circle of associates.

Although professing in principle an allegiance to Roman jurisprudence, Boniface’s knowledge of law, like that of many 8th-century men whose political ambitions placed them in positions of judicial responsibility, seems to have been superficial.²⁶ His petitions to the popes do

²³ *Letters*, 40–41; *Die Briefe*, 57.

²⁴ *Ibid.* On Boniface’s interest in the *libellus responsionum* (Gregory’s answers to Augustine), see Bill Friesen, “Answers and Echoes: The *Libellus responsionum* and the hagiography of north-western European mission,” *Early Medieval Europe* 14 (2006): 153–72.

²⁵ *Vide supra*, pp. 112 ff., and *infra*, p. 206.

²⁶ On the varied degrees of expertise in law among secular officials of the early Carolingian period, see Bougard, *La Justice*, 144–52. The question of legal training in the early Middle Ages is a difficult one; a cogent and useful review is offered by Pierre Riché, *Enseignement du droit en Gaule du VI^e au XI^e siècle*, Ius Romanum Medii Aevii (Milan: Typis Giuffrè, 1965).

not seem to result from a keen sense of juridical protocols but, instead, seem to indicate his desire to form an alliance with a higher authority than the Frankish bishops and priests, whom he regarded with antipathy.²⁷ Boniface's orientation toward Rome was so pronounced that some scholars have raised the possibility that Boniface was the pope's agent in part of a project to expand papal dominion.²⁸ Papal support for Boniface, however, was contingent in part upon Boniface's legal skills. The surviving letters from popes or their representatives to Boniface indicate that his inadequate knowledge of law could damage the efficacy of his strategies to secure greater ecclesiastical power. Once Zacharias became pope in 742, the letters from the papal curia even occasionally reproved and restrained Boniface's designs to exercise greater influence in his province because of his failure to conform to canonical norms. When apprised of the news that Boniface had installed three bishops whom he sought to have approved by the pope, Zacharias suggested that Boniface should reconsider the consecrations and reminded him of the prescription in canon law that "we should not establish bishops in villages or small cities, lest the title 'bishop' be cheapened."²⁹ In the same letter, Zacharias also refused to accept Boniface's proposal that he select his own successor: "We cannot permit this under any consideration whatsoever. It is manifestly contrary to every rule of the Church and the opinions of the fathers."³⁰ A subsequent letter shows that Boniface was redistributing episcopal authority independently of papal direction. After acceding to Boniface's proposal that he send *pallia* (signs of papal blessing) to the bishops of Sens, Rouen, and Rheims, Zacharias learned with some exasperation that Boniface had then revised his request and asked for only one, for the bishop of Rouen alone. He

²⁷ Noble, *Republic*, 62.

²⁸ Not only modern scholars but also 8th-century Saxons entertained the suspicion, for pope Gregory II felt compelled to assure his Thuringian audience that Boniface's appearance in their lands did not signify an incursion for the papacy's economic gain. *Letters*, 30: "for we have sent him to you, not for any temporal gain, but for the profit of your souls." *Die Briefe*, 43: "quia illum non pro lucro aliquo temporali conquiendo direximus, sed pro lucro animarum vestrarum ad vos eum misimus."

²⁹ *Letters*, 83; *Die Briefe*, 87. Zacharias's reference is to Pope Leo's letter (c.A.D. 446) to the bishops of Caesarea Mauritania, *Cum de ordinationibus* (JK 410), a widely circulated letter transmitted in a number of early medieval collections. On the transmission of Leonine decretals, see Jasper and Fuhrmann, *Papal Letters*, 49–58 et passim. There were several versions of this letter in circulation by the mid-9th century. The passage concerning the impropriety of ordaining bishops for new or underpopulated sees is found in some but not all versions.

³⁰ *Letters*, 85; *Die Briefe*, 89.

wrote back testily, “we were surprised and greatly disturbed at finding it so contradictory to your communication of last August . . . Will your fraternity inform us why you wrote first for three and afterward for one, so that we may be clear and no longer in doubt about the matter?”³¹ Boniface’s mistrust of the clergy he found in Saxony and Thuringia continued to prompt him to deviate from ecclesial norms: two years later, Zacharias, with some shock, reminded Boniface that he should not baptise those already Christian a second time, even if the Latin in which the original baptism was pronounced was flawed.³²

For his part, Boniface strove to demonstrate to Zacharias that he was fully cognisant that canon law governed the situations about which he was writing, and his letters to the pope were infused with juridical rhetoric he did not employ in addressing either his Anglo-Saxon correspondents or Zacharias’s predecessors. His initial greeting to Zacharias upon his accession to the papal throne was that “nothing gave us greater joy or happiness than the knowledge that the Supreme Arbiter had appointed your fatherly clemency to administer the canon law and govern the Apostolic See.”³³ The letter continued in this vein: “we most earnestly pray . . . that we may be worthy to be the obedient servants of Your Holiness under the canon law.”³⁴ Boniface then informed the pope that he had established three bishops over three dioceses in the newly divided province, for whose appointments he sought Apostolic charter and sanction, and that he intended to convene a synod, for which he also sought Apostolic support. It is in this letter that he made the famous claim that the Franks had not held a council in eighty years or had an archbishop or “established or restored anywhere the canon law of the Church.”³⁵ He reiterated that his plan to depose unworthy clergy would be under the direction of the Holy See “together with the Church canons.” He affirmed, rather pointedly, that “we have never heard that the Apostolic See had ever given a decision contrary to

³¹ *Letters*, 96–97; *Die Briefe*, 106. Relations between Boniface and Zacharias seem at a nadir at this point (5 November 744), as the letter makes clear that Zacharias believed Boniface had accused him of violating canon law and practicing simony, seemingly in relation to his grant of the three pallia.

³² *Letters*, 122–23; *Die Briefe*, 141.

³³ *Letters*, 78; *Die Briefe*, 80–81: “... quod clementem paternitatem vestram altissimus arbiter canonica iura regere et apostolicae sedis gubernacula gubernare concessit.”

³⁴ *Letters*, 78–79; *Die Briefe*, 81: “sub iure canonico.”

³⁵ *Die Briefe*, 82: “Franci enim, ut seniores dicunt, plus quam per tempus octuaginta annorum synodum non fecerunt nec archiepiscopum habuerunt nec aecclisiae canonica iura alicubi fundabant vel renovabant.”

canonical decrees.”³⁶ Perhaps the most constant sentiment in the letter is the request that papal authority be granted for his actions: “we seek to be supported by Apostolic authority,” “through the authority of Saint Peter,” “that they not presume to violate the teaching of the Apostolic See,” “I should have the counsel and teaching of your authority, that is of the Apostolic See,” “I wish to have the teaching and judgement of the Apostolic See,” “so that I may have the teaching and prescription of your authority,” “that it be permitted by your authority.”³⁷

There is, then, an odd disjunction between the perceptions of canon law and its application as Boniface and Zacharias negotiated the archbishop’s authority and actions. On the one hand, Boniface could be insistent on conforming to canon law as he knew it, and could demand confirmation of the authenticity of cited decrees. On the other hand, Zacharias seems to have suspected that Boniface’s knowledge of canon law might be defective, not least because Boniface seemed to be flouting it on critical points. Zacharias allowed Boniface considerable autonomy in the continuation of his work, although he urged Boniface to consult him on matters difficult to resolve.³⁸ Yet if Zacharias’s information was correct, Boniface was not above attempting to operate outside the bounds of well-known, standard procedures specified for centuries in canon law.

Perhaps the most critical issue that Boniface’s ministry raised was the exercise of episcopal authority. Not only was this bishop’s subordination to the authority of a pope or king suspect, but Boniface’s desire to alter the behaviour of his colleagues threatened the system of allotted jurisdictions that depended upon collegial recognition of the prerogatives of peers. Ironically, even as he was conducting himself in some

³⁶ *Die Briefe*, 85: “...apostolicam sedem contra decreta canonum nequaquam audivimus iudicasse.”

³⁷ *Die Briefe*, 81–83: “Auctoritate apostolatus roborare postulamus”; “per auctoritatem sancti Petri”; “ut non presumant violare preceptum apostolicae sedis”; “consilium et preceptum vestrae auctoritatis, id est apostolicae sedis, habere debeo”; “praeceptum et iudicium apostolicae sedis habere cupio”; “ut habeam preceptum et conscriptum auctoritatis vestrae”; “ut auctoritatis vestrae licentia sit.”

³⁸ Whether this autonomy is to be ascribed to Boniface’s insignificance, to Zacharias’s indifference or distance, or is magnified by the absence of sources available to the compiler of the *Liber Pontificalis* is an open question. Raymond Davis observes that the Lives of the 8th-century popes have no mention of the Franks, of the deposition of Childeric and the anointing of Pepin, or of Boniface. *The Lives of the Eighth-Century Popes (Liber Pontificalis) the Ancient Biographies of Nine Popes from A.D. 715 to A.D. 817*, trans. Raymond. Davis, Translated Texts for Historians (Liverpool: Liverpool University Press, 1992), 29.

respects as a rogue agent, the concerns Boniface brought to the pope's attention all revolved around issues of jurisdiction and authority. This is certainly understandable, given Boniface's peculiar situation: without metropolitan status and papal support, he would have been merely an intruder of the sort canon law clearly envisioned in provisions that prevented one bishop from exercising authority in the diocese of another.³⁹ The pope's interest in sustaining episcopal parity is evident in a letter Zacharias sent in 743 to the three bishops newly installed by Boniface, in which the pope assured them that he put his full authority behind the strict observance of episcopal jurisdictions: "We forbid... that any person shall dare to act counter to your episcopal jurisdiction... We forbid also... that any bishop shall dare to occupy your see by being transferred from another bishopric or that anyone, except the representative of our Apostolic See in those parts, shall appoint the new bishop after you shall have been called from this world."⁴⁰ The letter suggests that Zacharias was aware of potential conflict hovering around these sees, and his further remarks show that he suspected the rivalry might advance on either side: "On the other hand, let no one of you venture to invade the diocese of another or draw away churches therefrom. If any one of you—God forbid!—shall with rash presumption act contrary to this our command, let him know that he will be bound in the chains of anathema by the eternal judgement of God."⁴¹

In this suspicious atmosphere, it seems that Boniface had inadequate support among the existing clergy to effect expeditiously, either by fiat or persuasion, the changes he wished. Indeed, resistance to his initiatives seems to have been active at times. At one point, Zacharias notes

³⁹ This is one of the oldest and most widely known principles of canon law: it is stated by the Council of Nicea (325) canons 15, 16; Antioch (341) canons 10, 13, 21, 22; "Apostolic canons" 14, 15, 16; Chalcedon (451) canons 5, 6; and "Sardica" canons 14, 15. The Nicean and Chalcedonian canons may be found in Latin, Greek, and English in Norman P. Tanner, *Decrees of the Ecumenical Councils*, ed. Norman P. Tanner (London Washington, DC: Sheed & Ward Georgetown University Press, 1990), 13, 90. The "Apostolic canons," which replicate those of Antioch, are available in Karl Joseph von Hefele, trans. William R. Clark, *A History of the Councils of the Church, from the Original Documents*, 2nd ed. (1872; New York: AMS Press, 1972), 464–65. On the history of these canons, see Jean Gaudemet, *Les sources du droit de l'église en occident du II^e au VII^e siècle*, Initiations au christianisme ancien ([Paris]: Editions du Cerf/Editions du CNRS, 1985), 24–25.

⁴⁰ *Letters*, 89; *Die Briefe*, 93.

⁴¹ *Ibid.* On tensions over Boniface's and Lull's control over Fulda, Mainz, Utrecht, Würzburg, Eichstätt, Erfurt, Bûrburg, and Cologne, see Palmer, "Bishop Lull," 260–61, 264–75.

that, although some Frankish princes have chosen a city for Boniface's metropolitan see, "false and schismatic priests have striven to prevent this."⁴² Both in this comment and in Boniface's own reports, the question of episcopal authority is linked to moral authority. Boniface's letters are a series of accusations, both more and less specific, against "false priests" and other clerics. As one of the pope's agents wrote in 751 to Boniface with reference to one of the archbishop's letters, "The text thereof recites your grievous suffering and distress from men having no fear of God, false bishops, pseudo-priests, lustful clerks, and their evil acts and wicked conduct..."⁴³ The litany of clerical incompetence or malfeasance stretches across the archepiscopal tenure, from 739 to 751. In 739, Pope Gregory III acknowledged Boniface's suggestion that Bishop Wiwilo, ordained by himself long before, might not be administering his diocese according to Boniface's standards and that the ordinations of the local clergy might not be in full canonical order.⁴⁴ In 742, Boniface reported to the new pope Zacharias that "for the most part the episcopal sees in cities are in the hands of greedy laymen or are exploited by adulterous and vicious clergymen and publicans for secular uses," and that he was seeking the pope's authority to convict "deacons who have spent their lives since boyhood in debauchery, adultery, and every kind of filthiness" as well as bishops who "are drunkards and shiftless men, given to hunting and fighting in the army like soldiers and by their own hands shedding blood."⁴⁵

Such criticisms did not abate as Boniface's influence grew, but rather expanded, so that he not only denounced the clerics of Saxony and Thuringia but also those associated with the royal court. Aware that without the patronage of the Frankish court he could "neither govern the members of the Church nor defend the priests, clerks, monks and

⁴² *Letters*, 108; *Die Briefe*, 121–22: "Vel siquidem falsi sacerdotes et scismatici hoc impedire conati sunt."

⁴³ *Letters*, 166; *Die Briefe*, 205: "Quorum textus continebat multis te necessitatibus et turbinibus esse tristatum per homines non timentes Deum et falsos episcopos atque pseudo-presbiteros et fornicatores clericos eorumque iniquas actiones pravasque inmissiones."

⁴⁴ *Letters*, 72–73; *Die Briefe*, 72.

⁴⁵ *Letters*, 79–80; *Die Briefe*, 82–83: "Si invenero inter illos diaconos quos nominant, qui a pueritia sua semper in stupris, semper in adulteriis et in omnibus semper spurcitiis vitam ducentes... ut habeam preceptum et conscriptum auctoritas vestrae, quid de talibus diffiniatis, et per responsum apostolicum convincantur et arguatur peccatores. Et inveniuntur quidam inter eos episcopi, qui... sunt ebriosi et incuriosi vel venatores, et qui pugnant in exercitu armati et effundebant propria manu sanguinem hominum."

maids of God” but nonetheless contemptuous of the clerics at court and fearing “the guilt of communication” with them, Boniface longed to observe at least a private sort of excommunication and not to interact with them. He proposed this course of action both to Bishop Daniel of Winchester and to Pope Zacharias, apparently over the span of five or more years.⁴⁶ Neither would acquiesce to the breach of ecclesial fraternity, and Boniface himself was aware of his need for royal support and the extent to which shunning the “false priests” at court would jeopardise it.⁴⁷ Even in the last year of his life, 753, Boniface was fighting over jurisdiction, and he wrote to Zacharias’s successor Stephen to explain that the bishopric of Utrecht was in dispute: both he and the bishop of Cologne claimed it.⁴⁸

In this context of contested authority, recourse to the traditional mechanism for ecclesiastical decisions, the ecclesiastical council or synod, was one of the more politically astute manœuvres Boniface made; it was also an important foundation for subsequent use of the synod by Carolingians as a judicial forum in politically difficult situations. It is not clear whether the interest in synods originated with Boniface: Gregory III’s letter of c.738 to the bishops of Bavaria and Alemannia launched the proposition, beginning with a reminder that “Catholic authority, as well as that of the holy fathers, directs that twice every year a synod should be held for the welfare of the Christian people and the edification of the sons of the adoption, together with a trial of canonical cases.”⁴⁹ The letter went on to command the reception of

⁴⁶ *Letters*, 115, 158; *Die Briefe*, 129–30, 192–93: “Nos quidem patrocinated auxilium in palatio Francorum quaerentes a talium corporali communione abstinere et segregare nos iuxta preceptum canonum non possumus... Sine patrocino principis Francorum nec populum ecclesiae regere nec presbiteros vel clericos, monachos vel ancillas Dei defendere possum... Cum autem ad illum de istis causis auxilium querens pervenero, a talium communione abstinere canonicae nullatenus corporaliter possum nisi tantum a consensu illorum. Nam ego de illa communione culpam timeo... falsos autem sacerdotes, hypochritas et seductores populorum vel corrigerem ad viam salutis vel declinarem et abstinere a comunione [sic] ipsorum.”

⁴⁷ Daniel’s remarks echo those of Boniface himself (see preceding note): “As to communion with false brethren or priests, how practical would be the decision to keep away from them in temporal matters, while they try to force themselves in everywhere and always, unless you were ready to get out of the world altogether?” *Letters*, 119; *Die Briefe*, 134.

⁴⁸ *Die Briefe*, 234–36; *Letters*, 181–83. Palmer, “Bishop Lull,” 273–74.

⁴⁹ The canonical rule to hold a synod twice a year was stated in the decrees of Nicea (325) cap. 5, Chalcedon (451) cap. 19, Can. apost., cap. 38, and Antioch cap. 20. The canon was well known in Francia: in four versions it formed the third chapter of the *Collectio Vetus Gallica* (formerly the *Collectio Andegavensis*), dated by its most recent

Boniface as papal vicar and to reject the “false, heretical, and adulterous priests” he had reported during his visit to Rome. In 739, the same pope mentioned a council “which you are to hold in the Danube valley in our stead: we direct Your Fraternity to be present there vested with apostolic authority.”⁵⁰ Boniface himself in 742 referred warmly to “a synod of the church of the Saxons beyond the sea, in which I was born and reared, convoked and directed by the disciples of St. Gregory.”⁵¹ Remarks on his desire to convene a synod persist thereafter, although Boniface informed Pope Zacharias that it was Carloman, duke of the Franks, who “requested me to bring together a council.”⁵² After the synodal proceedings against Adalbert and Clement, Boniface maintained his commitment to the synod as an essential component of ecclesiastical government, and was preparing the written record for prosecutions against other suspect clergy, described as “more numerous than the true catholics.”⁵³

By imposing the synodal condemnation on the clergy he sought to depose, he gained a significant advantage in the exercise of his authority, which he had apparently been unable to wield effectively through metropolitan command alone. It was not only Adalbert and Clement who refused to do penance as ordered by Boniface, but other clerics as well. A letter from Zacharias notes “the case of priests deposed from

editor, Hubert Mordek, to the 7th century with continued transmission in the 8th and 9th centuries. *Kirchenrecht und Reform im Frankenreich. Die Collectio Vetus Gallica: Die älteste systematische Kanonensammlung des fränkischen Gallien: Studien und Edition*, Beiträge zur Geschichte und Quellenkunde des Mittelalters (Berlin, New York: W. de Gruyter, 1975), 366–68, 61–70. *Letters*, 71. The standard wording of the canon is quoted by Boniface: “Catholica et sanctorum patrum iubet auctoritas, ut bis in anno pro salute populi christiani seu exhortatione adoptionis filiorum sinodalia debeant celebrari et causarum canonicarum examinatio provenire.” *Die Briefe*, 70. Cf. Mayke de Jong, “Charlemagne’s Church,” in *Charlemagne: Empire and Society*, ed Joanna Story (Manchester and New York: Manchester University Press, 2005), 103–35 (p. 108).

⁵⁰ *Letters*, 73; *Die Briefe*, 73.

⁵¹ *Letters*, 81; *Die Briefe*, 8: “synodus et ecclesia, in qua natus et nutritus fui, id est in transmarina Saxonia Lundunensis synodus, inprimis a discipulis sancti Gregorii, id est Augustino, Laurentio, etc.” The synod is identified by Tangl as that of London, a.605. (p. 4). A response from Pope Zacharias, apparently written some years later, uses the same phrasing regarding “the synod of the church within which you were born and raised” and also refers by name to the priests dispatched by Gregory: *Letters*, 143; Tangl argues that another, later letter of Boniface must have used the same phrasing then echoed by Zacharias (*Die Briefe*, 173).

⁵² *Letters*, 79; *Die Briefe*, 82. On the political impetus for Carloman’s sponsorship of the council, see Semmler, “Bonifatius,” 21–35.

⁵³ *Letters*, 144; *Die Briefe*, 175: “pseudosacerdotes multo maioris numeri quam catholicos.”

their office on account of serious crimes, whom you have found guilty of adultery or murder, so that they cannot be either priests or clerks: unwilling to do penance as monks, they go to the king's palace and beg him to grant them lands of churches or monasteries where they may lead a secular life and squander the property of the saints."⁵⁴ The pope also acknowledged Boniface's warning of "another false teacher named Gewilip [of Mainz] who formerly held unlawfully the office of bishop and who, you say, is now hurrying to Rome without the sanction of anyone."⁵⁵

As Boniface struggled to acquire control over the ministries conducted within the jurisdiction he considered his, he advocated a form of ecclesial government that, although cumbersome, had a powerful history of resolving disputes. Popes had at times instructed Boniface simply to administer discipline on his own authority, but when in 747 Boniface wrote to archbishop Cuthbert of Canterbury, he advised him to use both archdiocesan and diocesan synods as a means of correction:⁵⁶

We have determined that it shall be the special duty of the metropolitan to inquire into the conduct of the bishops under him and their care for the people. He shall require them, upon their return from the synod, each to hold a meeting in his own diocese with his priests and abbots and urge them to carry out the synodal decrees. And every bishop finding himself unable to reform or correct some fault in his diocese shall lay the case openly in the synod before the archbishop for correction, just as the Roman Church, at my ordination, bound me by an oath that if I should find priests or people wandering from the law of God and could not correct them, I would always faithfully report the case to the Apostolic See and the Vicar of St. Peter for settlement.⁵⁷

The dual recourse to the Apostolic See and to synods as the essential elements of ecclesiastical government are in keeping with Boniface's conservative perception of late antique ecclesiology. That view seems evident in his understanding not only of the fora for judicial proceedings but also of disciplinary processes. His concern with penance centered around its use to impede entry into ecclesiastical office or as an ecclesiastical punishment for deviant clergy. A letter from Zacharias reminded Boniface that not only should no murderer, adulterer, or

⁵⁴ *Letters*, 109–10; *Die Briefe*, 123.

⁵⁵ *Letters*, 110; *Die Briefe*, 124.

⁵⁶ For instances when Boniface was instructed to use his own authority in discipline, see *Die Briefe*, 50, 89, 91, 160–61.

⁵⁷ *Letters*, 137; *Die Briefe*, 164.

fornicator hold religious office but neither should “men undergoing penance nor any to whom the sacred canons forbid ordination.”⁵⁸ This form of the prohibition did not preclude the resumption of office by those who had completed their penance; the point had been disputed at length in the early Middle Ages.⁵⁹ Near the end of his life, with unusual humility, Boniface told Zacharias that if his actions did not meet with the pope’s approval, he would follow his instructions and “either crave your indulgence or do penance.”⁶⁰ Again, the implication is that clerical penance need not disqualify the penitent from office.

In some instances, however, Boniface seems to have been troubled by his awareness of more stringent regulations that would have prohibited continued exercise of ecclesiastical ministry after penance. When a priest, after penance “restored to his office by the Franks,” was known to Boniface to be baptising and celebrating Mass “for a population who are believers but prone to error,” Boniface agonised over the alternatives: were the priest to be removed, babies would die unbaptised; were he to remain, his flock would be subject to the ministry of an unworthy celebrant. Considering other ramifications, Boniface imagined the scandal that would be caused by the revelation of the priest’s sin: if he suppressed the priest’s ministry, there would be grave damage done to the reputation of the clergy as a whole. “Therefore we have boldly ventured to bear with this man and allow him to remain in the sacred ministry, thinking the danger from the offense of one man would be less evil than the perdition of souls of almost the entire people.” The degree of his uncertainty resonates in his request to his reader, Archbishop Egbert of York: “On this whole subject I earnestly desire your holy advice in writing, as to how much I should bear to avoid scandal and how much I should repress.”⁶¹

Ambivalence over whether penance for clerics was a temporary or complete disqualification from clerical office reflects the ambiguous

⁵⁸ *Letters*, 109; *Die Briefe*, 122.

⁵⁹ Excellent discussion of the prohibition of the ordination of those who had done penance publicly, with reference to late antique councils, and mitigations arranged for clerics in orders performing penance, with reference to Gallic councils, is in Kevin Uhalde, “Juridical Administration and Pastoral Care: Late Antiquity,” in *A New History of Penance*, ed. Abigail Firey, Brill Companions to the Christian Tradition, 14 (Leiden and Boston: Brill Academic Publishers, 2008), 97–120.

⁶⁰ *Letters*, 158; *Die Briefe*, 192: “vel indulgentiam merear vel dignam penitentiam persolvam.”

⁶¹ *Letters*, 168–69; *Die Briefe*, 207–08.

function of penance as curative or punitive. Zacharias, writing of the priests and bishops Boniface reported as conducting “false ministry,” proposed that even when salvation was in doubt, penance was the fitting sequel to their defrocking. “You will strip them of their priestly functions and order them to spend their lives in penance under monastic rule [*sub regula monachica et penitentia summissos*]. Thus disciplined in body, if they ever turn to the right way and believe in their hearts, let a true confession with the lips witness their salvation. But even if they shall not be converted, the justice of your decision shall not be denied.”⁶² Given the context, it is unclear whether the “confession” necessary for salvation was a profession of faith or a confession of sin and expression of contrition or both. It does appear, however, that Zacharias was synthesising the Gregorian and Augustinian theses that corporal discipline and suffering had redemptive value but did not guarantee salvation, and that suffering could legitimately be exacted for the sins of even the unrepentant.⁶³

The view that penance need not be voluntary to be legitimate, and the use of the word *penitentia* for ecclesiastical punishments, is evident in a number of other 8th-century sources. The sentence of involuntary penance was sanctioned by the highest secular authority in the acts of the synods convened by Boniface in 742: Carloman “duke and prince of the Franks” issued among the synodal decrees the report that “we have deprived false priests and adulterous or lustful deacons of their church incomes, have degraded them, and forced them to do penance.”⁶⁴ Monks and nuns were envisioned as liable to even more clearly articulated punishments: “We have further ordered that after this synod, . . . any of the servants of God or the maids of Christ falling into carnal sin shall do penance in prison on bread and water. If it be an ordained priest, he shall be imprisoned for two years, first flogged to bleeding and afterward further disciplined at the bishop’s discretion. But if a clerk or monk fall into this sin, after a third flogging he shall be imprisoned for a year and there do penance. Likewise a veiled nun shall be bound to do the same penance, and all her hair shall be shaved.”⁶⁵ The severity of these

⁶² *Letters*, 145; *Die Briefe*, 176.

⁶³ Vide supra, Chapter Two, “The thief in Paradise,” pp. 106–108.

⁶⁴ *Letters*, 91; *Die Briefe*, 99: “ad poenitentiam coegimus.”

⁶⁵ *Letters*, 92–93; *Die Briefe*, 101: “...quod in carcere penitentiam faciat in pane et aqua...post tertiam verberationem in carcerem missus vertentem annum ibi penitentiam agat. Similiter et nonnae velatae eadem penitentia conteneantur et radantur omnes capilli capitis eius.” Cp. Conc. Germanicum (742), MGH Conc. II, 1, p. 4.

proposed measures was balanced by the level of protection claimed for clergy facing secular accusations: Pope Gregory II had advised Boniface that “in regard to a priest or cleric accused by the people, unless the evidence of the witnesses to the charge against him is positive, let him take an oath before the assembly, calling as witness of his innocence Him to whom all things are plain and open; and so let him keep his proper standing.”⁶⁶ The rigour of the ecclesiastical penalties for erring clerics may have been part of a calculated protection of ecclesiastical jurisdiction intended to demonstrate that, at a time of increasing insistence on clerical immunity from secular judgements, there would be sufficient prosecution and punishment within the Church.

In these reports of penances as punishments there are none of the rhetorical *figura*, allusions, or common turns of phrase that shape the meaning of penance in the imperial period of the Carolingian dynasty: there are no references to tears, purgation, cure, or the standard biblical tropes. It is perhaps not surprising that there should be little reference to the pastoral use of penance in Boniface’s letters to and from the popes. Those communications concerned matters of juridical consultation and should not be expected to reflect the broader range of Boniface’s ministry. Yet also in his correspondence with his Anglo-Saxon friends—bishops, monks, nuns, abbesses—there is no allusion to the use of penance in pastoral care. Boniface’s appreciation of penance seems to have been limited not only to its punitive function but also to its use as a disciplinary measure to be imposed within ecclesiastical circles only.⁶⁷ Even when bemoaning the ways in which lay nobles impeded his ventures, Boniface seems not to have entertained the possibility that they could be brought under his authority by education of their souls.

In contrast to the bishops embroiled in royal politics some decades later, Boniface’s confidence in his ability to call Christians, clerical or

⁶⁶ *Letters*, 54; *Die Briefe*, 45. The use of a purgative oath, as stipulated in Roman law (vide supra, Chapter One, pp. 23 n. 28, 47 n. 92) would seem to have been retained in Rome in this period: the charges made against Pope Leo III were resolved in the council held by Charlemagne in Rome that, adhering to the principle that no-one can judge the pope (*nemine papa iudicet*), allowed the pope to establish his innocence by swearing an oath on the Gospels. Alessandro Barbero, *Charlemagne, Father of a Continent*, trans. Allan Cameron (Berkeley, Los Angeles, and London: University of California Press, 2004), 91–92.

⁶⁷ Canonical or episcopal judgement over laity is not evident until the mid-9th century, according to François Bougard, *La justice dans le royaume d’Italie de la fin du VIII^e siècle au début du XI^e siècle*, Bibliothèque des Écoles Françaises d’Athènes et de Rome, 291 (Rome: École Française de Rome, 1995), 237–43.

lay, to humble demonstrations of conversion, recantation, and remorse was much more limited. A letter from his fellow bishop and respected counsellor Daniel of Winchester illuminates the frustration, disdain, and anxiety some of the Frankish clergy aroused in Boniface. Daniel delicately pointed out to Boniface that he was in difficulties with his superiors and also that Boniface was avoiding contact with “the priesthood of murderers and adulterers.”⁶⁸ With canny logic that would satisfy Boniface’s sense of righteousness but also guide him to a more congenial attitude, Daniel quoted Augustine’s observation that both clean and unclean animals entered the ark through the same door; his deduction was that rather than allowing the “dangerous conceit [...] that we ought to separate ourselves from [evil men whom we cannot reform or control]...there is a time for dissimulation and for toleration of evil men within the Church and again a time for punishing and reforming them.”⁶⁹ Just as Cephas, Paul, the Psalmist, and Joseph practiced deceit, wrote Daniel, so too was there the model of Israel, who covered his loins with goatskins. “The goatskins were the symbol of sins, and he who clothed himself in them signifies the one who bears the sins of others.”⁷⁰ Daniel’s counsel seems a telling attempt to mitigate Boniface’s impatience, both with the failure of others to meet his standards of conduct and also with his own incapacity to accomplish his objectives by fiat. The signs indicate that Boniface did not possess the personal charisma, the social and political standing, or the institutional precedent to obtain penitential obedience.

Although Boniface was rigorous, aggressive, and operating in an established ecclesiastical setting, in the fairly generous documentation of his episcopacy there is little evidence for use of penance as either a pastoral or purgative measure. He seems to have known it only as a device for the discipline of wayward clergy, to be used sparingly. An important element, however, in the disciplinary use of penance, as revealed in the Bonifatian correspondence, was the concept that penance could be punitive, and even involuntary in its imposition. There seems to have been no recognition of the possibility that the penitential aspects of lay piety, evident in the popular response to Adalbert’s staging of mass absolutions and intercessory devotions, could be co-ordinated

⁶⁸ *Letters*, 118, 121; *Die Briefe*, 136.

⁶⁹ *Letters*, 120; *Die Briefe*, 135. Cf. Augustine, *de fide et operibus*, capp. 7, 4.

⁷⁰ *Letters*, 121; *Die Briefe*, 136.

with clerical methods of pastoral care to tighten the bonds between clergy and their flocks.

Both the political context in which Boniface operated and his own understanding of jurisprudence limited his power to prosecute, to correct, and to govern, as his own words attest. His support at the court and among the Frankish clergy was tenuous. He was not given to attempting legal innovations or to using a broad range of texts for interpretation of law. He did not practice the techniques of biblical exegesis that could elaborate upon specific verses to obtain a fundamental juridical principle. Presuming that hierarchical authority was sufficient claim for the exercise of power, as is seen in his appeals to Rome and his determination to gain metropolitan status for himself, he did not draw upon the power of the court, or the power of extensive clerical consensus. Finally, the incident of Adalbert and the little crosses is intriguing for the questions it raises regarding Boniface's pastoral and teaching authority and the extent to which the bishops of the region had supervised popular devotion. That a priest should be preaching, let alone in open fields, and that his teaching matched the beliefs of his audience in such a way that he had enthusiastic and continued attendance, indicates a breach in the pastoral hierarchy, in which priests are to be supervised by their bishops.

The records of Adalbert's condemnation are noteworthy in that they indicate a phenomenon usually placed by scholars in the later Middle Ages: "popular heresy," unorthodox beliefs held in popular, rather than learned, circles. Such heresies are related to aspects of popular piety, and so in the prosecution of Adalbert lies evidence for some of the directions popular belief had taken in northeastern Francia in the 8th century. There are points of tangency with evidence from another description from the 9th century of popular heresies, and from those clues it is possible to gain some sense of the trends in popular piety that Carolingian bishops sought to redirect toward an interest in sacerdotally supervised confession and penance. To the evidence for the popular beliefs those bishops found dismaying this chapter now turns.

The prosecution of heresy, c.850: "Lest the baths collapse"

A century after Boniface's prosecution of Adalbert, the efforts of the Lyonnaise bishops Agobard and Amulo to prevent the spread of ideas they saw as pernicious to their flocks reflect both a changed political

environment and also altered expectations for episcopal authority. Their situation was complicated by the fact that the purveyors of unorthodox teachings in Lyon were not Christians and, thus, not within episcopal jurisdiction. The attempted solution to that complication is in itself revealing. Amulo's efforts to justify the proposed restraints on religious teaching and his manipulation of Christian texts to establish legal precedent shows a juridical agility quite unlike Boniface's simple readings of canons authorised by Rome. The argument regarding corpse and blood pollution discussed in the previous chapter was but one of the rationales Amulo presented to his audience. While that portion of the treatise illustrates how tacit law might be transformed into written, statutory prohibitions, other elements of Amulo's text illuminate a new confidence within the Carolingian episcopate that the imperial, rather than papal, court was the best forum for pleading for sanctions against dangers to Christian belief. Amulo's brief details at length specific beliefs and traditions to be suppressed, or at least isolated from Christian reception. The appeal to the secular court to review those beliefs and traditions was likely a response to recent displays of imperial support for pastoral initiatives and the use of imperial legislation in shaping religious belief.

Although Amulo had argued that Jews were polluted by the corpse of Jesus,⁷¹ when discussing belief he argued that it was not Judaism but heresy that constituted the public danger to the Christian polity. The distinction opened an avenue of argument to him that circumvented well-established Roman imperial legislation that provided for toleration and protection of Jews. Whereas Jews had secular protection from ecclesial prosecution, heretics had no immunity in either secular or ecclesiastical jurisdictions.⁷² Amulo's bid to use the category of heresy to justify legislation pertaining to Jews might seem unexceptional, at first sight. Associating Judaism with heresy had legal precedents. Most

⁷¹ Vide supra, pp. 91 ff.

⁷² For debates over the jurisdictional authority of the Church over Jews and the question of their identity as heretics, see Gilbert Dahan, *Les intellectuels chrétiens et les juifs au moyen âge* (Paris: Éditions du Cerf, 1990), 106, 194–97. For discussion of changing protections and restrictions for Jews in Roman law, see Solomon Grayzel, "The Jews and Roman Law" *The Jewish Quarterly Review* n.s. 59 (1968): 93–117. On the increase of heresy legislation in late antiquity, see Caroline Humfress, "A New Legal Cosmos: Late Roman Lawyers and the Early Medieval Church," in *The Medieval World*, ed. Peter Linehan and Janet L. Nelson (London and New York: Routledge, 2001), 557–75 (p. 559).

5th- and 6th-century Roman law pertaining to Jews was cast in the formula "Jews, pagans, heretics" with some variation in the order.⁷³ In the sphere of theological disputation, it was not uncommon to identify some heresies as "judaising," and catalogues of heresies included Judaism. Equating (in contrast to grouping) Jews with heretics in law, however, was apparently a novelty, even in the eyes of Agobard and Amulo. The Lyonnaise bishops treated their transfer of the conceptual category of heretics to Jews as one needing explicit justification.

In their arguments can be seen the literary strategies that characterise Carolingian juridical reasoning: citation of patristic authority and exegesis of selected biblical verses. Rather than revisiting the tradition of *Adversus Iudaeos* texts, both authors drew on Irenaeus's *Adversus Haereses*, written in the 2nd century by the bishop of Lyons against the Gnostics. From it they cited the story of the encounter of Saint John and the heretic Cerinthus in the public baths: John, once he was aware of Cerinthus's presence, bounded out of the baths "and ran away unwashed, saying, 'Let us flee this place, lest even the baths themselves collapse, in which Cerinthus, enemy of truth, washes.'"⁷⁴ To Agobard and Amulo, the story provided an argument both for the equation of heretics and Jews and for the sequestration of heretics. The clear point of the story lay in John's refusal to have even the contact of proximity with Cerinthus. To provide biblical confirmation that the apostle John sanctioned the segregation of Jews and Christians, Amulo presented a passage from the second letter of John: "If anyone comes to you and does not bring this [i.e., Christian] doctrine, do not receive him into the house or give him any greeting..." (2 John 10–11).⁷⁵

Amulo's effort to obtain segregating legislation from the court failed, whether because of the juridical frailty of the argument that Jews could be counted as heretics, or because of the impropriety of a Christian ruler determining what was heterodox in Jewish belief, or because of the weakness of the Lyonnaise episcopal ties to the imperial court, or

⁷³ Linder, *Roman Imperial Legislation*, 62.

⁷⁴ Irenaeus, W. Wigan Harvey, ed., *Sancti Irenaei Episcopi Lugdunensis Libros Quinque Adversus Haereses* (Cambridge, Cambridge University Press, 1857), II, 13–14. (Adv. Haer. III.4.) The passage is also excerpted by Eusebius, Eccl. Hist. IV.14.7. Agobardus Lugdunensis, *Opera Omnia*, 204, with readings that differ from Amulo, "Liber Contra Iudaeos," [hereafter "Adversus Iudaeos"] J.-P. Migne, *Patrologiae cursus completus: Series latina* (Paris, 1844) [hereafter PL], 116, col. 144.

⁷⁵ "Adversus Iudaeos," PL 116, col. 142.

for some other reason cannot be known.⁷⁶ The sources are silent; there is only Charles's refusal to ratify the canons proposed by Amulo. One of the pressing questions for further research is the standing of bishops in the southern regions of the empire at the imperial court. The next chapter argues that penitentialism developed in the early 9th century in the context of imperial expansion to the east. The effects of that development then became manifest in the court itself in the middle decades of the 9th century, in the highly politicised displays of public penance by Louis the Pious and the proceedings against the queens Judith and Theutberga. The impact of penitentialism in the southern empire is at this point uncertain.

One indication that regional differences in circumstance and tradition played a part in religious politics at the court is the difference in juridical discourse between Amulo's tract and the writings of bishops closely allied to the court. Both Agobard and Amulo have a noticeable preference for citing authors with local associations, such as the quotation noted above of Irenaeus. Irenaeus was bishop of Lyons, and was further a superluminary witness to tradition because of his contact with not only the Martyrs of Lyons but also the martyr Polycarp, who knew John and other apostles. Other local guarantors of the "tradition" of opposing the fraternisation of Jews and Christians cited by Agobard and Amulo, probably from the dossier of Florus, the indefatigable deacon of Lyons, are Avitus, bishop of Vienne, Apollinaris, bishop of Valens, Gregory, bishop of Langres, Viventius, bishop of Lyons, Caesarius, bishop of Arles, Priscus, bishop of Lyons, and Lupus, bishop of Troyes. These southern Gallic authors were not those preferred by the bishops constructing the penitential discourse at the court. The written Christian authorities beyond sacred Scripture that were repeatedly cited in Carolingian conciliar documents were Gregory the Great, Julianus Pomerius (under the name of Caesarius of Arles or Augustine), Augustine, and Isidore of Seville.⁷⁷ Caesarius of Arles was an author cited by both the court and Lyonnaise bishops, but even in that case,

⁷⁶ Agobard had been a prominent figure presiding over the penitential deposition of the emperor Louis the Pious in 833, and when Louis returned to the throne, Agobard was exiled from his bishopric. See Egon Boshof, *Erzbischof Agobard von Lyon: Leben und Werk*, Kölner Historische Abhandlungen (Cologne: Böhlau Verlag, 1969), 195–215, 117.

⁷⁷ Vide infra, pp. 182 ff.

the texts did not match: the court bishops were actually citing the work of Julianus Pomerius.⁷⁸

The disjunction between the textual authorities preferred by the bishops of Lyons and those recognised in the northern regions of Francia is, ironically, a refraction of the conflict over textual traditions that set both the Lyonnaise bishops and Boniface against those they considered heretics. Both episodes show that one of the challenges facing bishops was the need to compete against preachers who not only operated outside the institutional structures of episcopal authorisation and regulation but also drew upon traditions and texts different from those used by the established episcopate for their teaching. Both Agobard and Amulo complained that Christians were attending synagogue “because the sermons are better,” a concern also specified when it was noted that Adalbert was drawing Christians away from “the ancient churches.”⁷⁹ In another case of an episcopal prosecution of unauthorised teaching to be discussed below, that of the prophetess Theoda, the judicial report included the evidence that the gravely heretical aspect of her preaching was that laity of both sexes “turned from the preached doctrine of the Church to follow her as though she were a teacher sent from heaven.”⁸⁰

The complaints filed in each case, although they specify the erroneous content of the teachings, are opaque in that they presumed that description of those teachings sufficed to make clear what was inconsonant with authorised precepts. It appears, however, that two common features of the rejected teachings were their methods of extending religious speculation beyond what was warranted by biblical and patristic authorities and a focus on the mysteries of the celestial realms or eschatology that differed from the pastoral education designed to examine the individual soul. In order to understand better the impact of the pastoral education oriented toward the “penitentialism” of the early 9th century, it is useful to consider some of the popular traditions that Carolingian bishops sought to correct.

⁷⁸ The discrepancies between the corpus of authors preferred by Agobard and those of the court bishops is further demonstrated in the Index scriptorum in Agobardus Lugdunensis, *Opera Omnia*, 405–14, 462, which shows how little of Gregory’s work Agobard used, and the complete absence of Julianus Pomerius.

⁷⁹ Agobardus Lugdunensis, *Opera Omnia*, 194 (“De insolentia Iudaeorum”). Amulo, “Adversus Iudaeos,” PL 116, col. 170. Boniface, *Die Briefe*, 104.

⁸⁰ Conc. Mainz (847), in *Die Konzilien der Karolingischen Teilreiche, 843–859* [*Concilia Aevi Karolini 843–859*], ed. Wilfried Hartmann, MGH Conc. III (Hanover: Hahnsche Buchhandlung, 1984), 151.

Angels and messiahs: The religious cosmos of popular belief

There are special problems in interpreting the evidence for popular religious traditions in the Carolingian period. It is scant and diffuse. Popular beliefs are difficult to reconstruct, largely because they were not committed to writing by their proponents, and the surviving accounts that do describe them tend to be unsympathetic. Furthermore, when the Carolingian clerical elite considered teaching authority, their views were informed in part by the complex heritage of ideas about class, literacy, and lay status embedded in the concept of *rustici*.⁸¹ The common correlation of superstition and rusticity in late antique and early medieval texts, which has spawned much romantic identification of “folk” practice, has to some extent masked the more complicated conditions in which beliefs and practices flowed across the boundaries of class and literacy. In an excellent discussion of the hazards of imposing the classifications of “popular” and “learned” on medieval religious beliefs and practices, Valerie Flint observes that the lay *nobiles* might share the perspectives of the *rustici*, although it might be impolitic for a cleric to suggest it.⁸² The image of the *rustici*, then, can be investigated not as a sociologist’s report of class distinction but as a rhetorical device of great political utility: politically awkward criticisms of lay nobility could be redirected toward the less exalted for oblique expression. *Rustici*, however, were not treated in the literature as adversaries; they were imagined as essential components of the community, and vulnerability could also be ascribed to them. The power of the elite was thus presented as protective rather than oppressive power, and correction of rustic error as salutary.

The perception of a vulnerable, less educated population surfaces in charges framed against heretics. The Roman synod’s account of Adalbert’s transgressions refers to the “multitude of rustics” (*multi-*

⁸¹ Bernadette Filotas, *Pagan Survivals, Superstitions and Popular Cultures in Early Medieval Pastoral Literature* (Toronto: Pontifical Institute of Mediaeval Studies, 2005), 27–28 et passim; A. Etchegaray Cruz, “Le rôle du *De catechizandis rudibus* de Saint Augustin dans la catéchèse missionnaire dès 710 jusqu’à 847,” in *Studia Patristica*, Vol. XI, Part II, ed. F.L. Cross, *Texte und Untersuchungen zur Geschichte der altchristlichen Literatur* (Berlin: Akademie-Verlag, 1972), 316–21; Jean-Paul Bouhot, “Alcuin et le *De catechizandis rudibus* de saint Augustin,” *Recherches Augustiniennes* 15 (1980): 176–240; Michel Banniard, “Théorie et pratique de la langue et du style chez Alcuin: Rusticité feinte et rusticité masquée,” *Francia* 13 (1985): 579–601.

⁸² Valerie Flint, *The Rise of Magic in Early Medieval Europe* (Princeton, NJ: Princeton University Press, 1991), 37–38.

tudinem rusticorum) deceived by claims of signs and wonders, and to Adalbert's ordination by "uneducated bishops" (*episcopos indoctos*).⁸³ The prosecutors' accounts should be read with caution, as it was necessary to demonstrate that the accused were heretical in their beliefs and corrupting their auditors with their heresies; as a result, the documents focus on the unorthodox components of their preaching and their popularity. Additional evidence suggests, however, that there was a degree of division between members of the upper echelons of the clergy trained in particular techniques of textual interpretation and a body of seemingly popular priests ministering more or less informally among the laity. Boniface's correspondent Daniel of Winchester, counselling Boniface to be patient in one of his many conflicts with "wicked men," assured him that, "though these men put forward unheard-of doctrines to deceive the mind of the ignorant, such doctrines and the refutation of them are not hidden from you, who have perfect familiarity and not merely a slight acquaintance with the Scripture..."⁸⁴ When Pope Zacharias wrote to the lay nobility associated with Fulda, the monastery founded by Boniface, his initial warning was to "put your trust in those who walk in the royal road and declare unto you the orthodox catholic faith" rather than in "false priests or those who utter falsehood, coming to you in sheep's clothing but being inwardly ravening wolves."⁸⁵ The protection against "false priests" for those governing monasteries, Zacharias explained, was not only consecration by the bishop; "it is also ordered that the consecrated abbott or abbess should first be taught in the whole divine law and in Holy Scripture."⁸⁶

In this mandate is a glimpse of the critical distinction between the *rustici* and the educated Christian. The "literacy" demanded for orthodoxy should not be taken literally as a simple description of the ability to read but, rather, should be understood in its fully connotative sense: the discriminating knowledge of canonical texts. The popular beliefs

⁸³ Conc. Romanum (745), MGH Conc. II, 1, p. 39.

⁸⁴ *Letters*, 118; *Die Briefe*, 133: "...licet, inquam, actenus inaudita proferant dogmata ad decipienda minus intelligentium corda, quae vos in divinis voluminibus optime eruditos neque ad horam introducta latent neque etiam ea, quae eis oportune possint opponi..."

⁸⁵ *Letters*, 153; *Die Briefe*, 185: "Non adcommodeis aures falsis sacerdotibus aut his, qui mendacia adnuntiant, 'qui veniunt ad vos in vestitu ovium, intus autem sunt lupi rapaces'; sed potius illis credite, qui viam regiam incedentes orthodoxam et catholicam fidem vobis praedicantes adnuntiant..."

⁸⁶ *Letters*, 154; *Die Briefe*, 187: "Oportet autem, ut is, qui ordinatur abbas sive abbatisa, prius edoceatur omnem divinam legem et sacram scripturam..."

described by Boniface and the bishops of Lyons, although cast as the superstitions of the illiterate, seem to represent the teachings of religious leaders with respect for and often the ability to use the written word.⁸⁷ Adalbert was reported to have invoked angels whose names seem to accord with the names relayed in the *Book of Enoch*.⁸⁸ Although the presence of a Latin fragment of *Enoch* in a Carolingian manuscript may indicate that some early medieval angelology derived directly from continued recourse to this apocryphal book, other, more nebulous resources of imagination and tale-telling may have contributed either to Adalbert's preaching or Boniface's account of it.⁸⁹ That some of the names of the angels had entered liturgical litanies of the 8th century suggests that Adalbert's practices were not wholly distinct from common ones. The prosecutorial documents' presentation of his deviancy may obscure the extent to which his beliefs were shared by others. In tracing the names of Adalbert's angels, Jeffrey Russell notes evidence of fairly widespread dissemination, in Carolingian litanies, a paten, a sarcophagus. "The most sensible explanation for Aldebert's angels is that he picked them up uncritically from contemporary liturgies and other such sources, which in turn had equally uncritically compiled them from a tradition that confused acceptable Christian angels with disreputable gnostic ones. It was probably a wide tradition."⁹⁰

Angels were also implicated in the transmission and delivery of the "Letter from Heaven" that Adalbert allegedly claimed to have received.⁹¹

⁸⁷ Cf. Brian Stock, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton, NJ: Princeton University Press, 1983), 78–79, 90–91 et passim.

⁸⁸ Jeffrey B. Russell, "Saint Boniface and the Eccentrics," *Church History* 33 (1964): 236–38.

⁸⁹ The Enoch fragment is translated in Montague Rhodes James, "A Fragment of the Book of Enoch in Latin," in *Apocrypha Anecdota: A Collection of Thirteen Apocryphal Books and Fragments*, Texts and Studies, 2.3 (1893; Nendeln: Kraus Reprint, 1967), 146–50. On possible traces of the use of Enoch (especially apocalyptic traditions) in vernacular literature and hagiography, see Martin McNamara, *The Apocrypha in the Irish Church* ([Dublin]: Dublin Institute for Advanced Studies, 1975), 24–27. On the breadth of angelology in the early Middle Ages, see Phillipe Faure, "L'ange du haut moyen âge occidental (IV^e–IX^e siècles): Création ou tradition?" *Médiévale* 15 (1988): 31–49.

⁹⁰ Russell, "Eccentrics," 238. The point is elaborated and evidence added by Flint, *Rise of Magic*, 168–72. References to angels in orthodox sources and the increasing efforts to control angelology in the early Middle Ages are discussed by Faure, "L'Ange."

⁹¹ On the "Letter from Heaven," see M[aximilian] Bittner, *Der vom Himmel gefallene Brief Christi in seine morgenländischen Versionen und Rezensionen*, Denkschrift der Kaiserlichen Akademie der Wissenschaften zu Wien (Vienna: Hölder, 1905); Clare A. Lees, "The 'Sunday Letter' and the 'Sunday Lists,'" *Anglo-Saxon England* 14 (1985):

In the second session of the Roman Synod that condemned Adalbert, the report was adduced regarding a letter said to have come from Christ and fallen from heaven; the quoted opening section of the letter explained that after falling to earth in Jerusalem, it was found by the Archangel Michael, then read by a priest, Icore, who despatched it to another priest, beginning a chain of transmission from one named priest to another until it arrived at Mont Saint Michel (the site, of course, of Michael's appearance in Francia). Then, by the hand of an angel, it was delivered to the tomb of St. Peter in Rome, "where the keys of the kingdom are kept." There it was received with public vigils, fasting, and prayer led by "twelve ecclesiastical dignitaries."⁹² The letter's authority likely derived not only from its remarkable history but also from its form, a celestial version of a written imperial edict or papal decretal.

As with the invocations of named angels, if these charges were not devised either by Boniface or in Rome by recourse to written records of past condemnations of belief, the account of the Letter from Heaven shows Adalbert operating within a sphere of widely received religious tradition, rather than as a lone eccentric. The Letter from Heaven is attested in numerous versions, and it seems to have enjoyed special popularity in the Latin West between the 6th and 9th centuries.⁹³ No less a person than Charlemagne was popularly said to have received a supernatural letter, which by its sanctions protected him in battle.⁹⁴

129–51; Curt F. Buhler, "Prayers and Charms in Certain Middle English Scrolls," *Speculum* 39 (1964): 270–78; and Louis Gougaud, "Le prière dite de Charlemagne et les pièces apocryphes apparantées," *Revue d'Histoire Ecclésiastique* 20 (1924): 211–38. Older but still interesting are Isaac H. Hall, "The Letter of Holy Sunday," *Journal of the American Oriental Society* 15 (1893): 121–42; W.R. Halliday, "A Note Upon the Sunday Epistle and the Letter of Pope Leo," *Speculum* 2 (1927): 73–78; and Hippolyte Delehaye, "Note sur la légende de la lettre du Christ tombée du ciel," *Académie Royale de Belgique, Bulletin de la Classe des Lettres* (1899): 171–213.

⁹² Conc. Romanum (745), MGH Conc. II, 1, p. 41: "Ecce domine epistolam, quam utebatur et divulgabat esse Iesu et de caelo cecidisse... Incipit epistola domini nostri Iesu Christi filii Dei, qui in Hierosolima cecidit; et per Michael archangelum ipsa epistola inventa est... Et ipsa epistola per manus angeli Domini pervenit ad Romanam civitatem, ad locum sepulchri sancti Petri, ubi claves regni caelorum constitutae sunt. Et XII papati, qui sunt in Romana civitate, triduanas fecerunt vigiliis in ieiuniis, in orationibus, per diebus et noctibus et cetera..."

⁹³ There are Latin, Greek, French, English, German, Russian, Polish, Welsh, Armenian, Syriac, Arabic, and Ethiopian versions: Bittner, *Der vom Himmel gefallene Brief Christi in seine morgenländischen Versionen und Rezensionen*, 1–2; Halliday, "A Note Upon the Sunday Epistle and the Letter of Pope Leo," 74; Gougaud, "La Prière," 214–15. A Nestorian text of the letter even specifies the dates at which it appeared: A.D. 731, 739, 783, 829. Hall, "The Letter of Holy Sunday," 122, 123, 126.

⁹⁴ Gougaud, "La Prière," 211.

The function of the letter seems to have changed quite rapidly from a communication regarding the strict observance of Sunday to that of an amulet or charm against physical injuries, sometimes specified as fire, lightning, tempest, or difficult childbirth.⁹⁵ Whether or not it would serve the accused in an ordeal is not made explicit. Because of its prophylactic use, the letter came to be associated in manuscripts with an array of spells and cures and thus entered the domain of early medieval medicine.⁹⁶ It thus represented another configuration of combined divine and human powers of ministry to the endangered. It was part of a tradition that sought healing not through confession and penance but through a celestial magic that was both less demanding of the afflicted and less regulated by law.

Boniface's resistance to speculative cosmologies also emerged in the charges he laid against his fellow-bishop, Virgil of Salzburg. Not only the roiling upper cosmos, alive with angelic activity and openings of communication between heaven and earth, was the object of early medieval contemplation, but so too were the netherworlds. In his attack on Virgil, Boniface charged that Virgil was promoting the belief that there was another world below this one, "another world and other men, and also a sun and a moon." In view of Boniface's objections to Virgil's acquisition of the see of Salzburg, apparently with the support of Duke Odilo of Bavaria, Pope Zacharias reserved judgement on Virgil and, after pointedly emphasising the still unproven nature of the charge, decided to summon Virgil for papal investigation.⁹⁷

In this matter, too, the cosmological claim in dispute was neither unique nor peculiar. Extensive traditions of netherworlds and otherworlds are found in a range of early medieval texts. The *Cosmography* circulated under the name Aethicus Ister has been seen as having such relations to Boniface's accusations against Virgil that the work has at times been attributed to Virgil.⁹⁸ Carolingian manuscripts contain dia-

⁹⁵ Gougaud, "La Prière," 215.

⁹⁶ Buhler, "Prayers and Charms in Certain Middle English Scrolls," 271. On other intersections of angelology and prophylactic devices, see Faure, "L'Ange," 36–37.

⁹⁷ *Letters*, 147.

⁹⁸ The identity of Aethicus Ister has been hotly debated. The claim for Virgil's authorship was set forth by Heinz Löwe, *Ein literarischer Widersacher des Bonifatius, Virgil von Salzburg und die Kosmographie des Aethicus Ister*, Akademie der Wissenschaften und der Literatur [Mainz], Abhandlung der Geistes- und Sozialwissenschaftlichen Klasse, Jahrg. 1951 (Wiesbaden, 1951). See, however, Wesley M. Stevens, "[Review of Kurt Hillkowitz, *Zur Kosmographie des Aethicus*]," *Speculum* 51 (1976): 752–55; and Michael Herren, "Hiberno-Latin Philology: The State of the Question," in *Insular Latin*

grams of cosmographies proposed by classical authors.⁹⁹ The *Navigatio Sancti Brendani*, usually dated to the 8th or 9th century, was an enormously popular melding of hagiographic convention and supernatural voyage tale.¹⁰⁰ Vision literature included travels to the underworld, as in the *Visio Baronti*, and to the heavens, as in the apocalyptic *Visio Pauli*, the long Latin version of which is preserved in an 8th-century manuscript.¹⁰¹

These probes of the celestial and infernal worlds were anchored to liturgical settings or claimed association with standard Christian devotions. The extra-canonical names of the angels appear in church litanies and in the prayers of a consecrated nun.¹⁰² The Voyage of Saint Brendan has for its literary framework the liturgical year and embeds

Studies, ed. Michael Herren (1981), 1–22. On the apocalyptic direction of Aethicus Ister, see Brandes, “Tempora periculosa sunt,” 61.

⁹⁹ On Carolingian cosmography, see Bruce Eastwood, *The Revival of Planetary Astronomy in Carolingian and Post-Carolingian Europe* (Aldershot [England] and Burlington, VT: Ashgate/Variorum, 2002); and Bruce Eastwood and Gerd Grasshoff, *Planetary Diagrams for Roman Astronomy in Medieval Europe, ca. 800–1500*, Transactions of the American Philosophical Society (Philadelphia: American Philosophical Society, 2004).

¹⁰⁰ Seminal studies of the *Navigatio Sancti Brendani* are reprinted in Jonathan M. Wooding, *The Otherworld Voyage in Early Irish Literature: an Anthology of Criticism* (Dublin and Portland, OR: Four Courts Press, 2000), including Mario Esposito’s “An apocryphal ‘Book of Enoch and Elias’ as a possible source for the *Navigatio Sancti Brendani*.” It may be noted that the *Navigatio* was faulted for heterodoxy in a poem published by Charles Plummer, *Vitae Sanctorum Hiberniae partim hactenus ineditae ad fidem codicum manuscriptorum recognovit: Prolegomenis, Notis, Indicibus*, vol. 2 (Oxford: Clarendon Press, 1968), 293–94: “Hic poeta, qui Brendani vitam vult describere/ Grave crimen viro Dei videtur inurere/ O quam stultum et vesanum [leg. insanum?] est de sancto credere.../Fabulosum est, non verum, neque veri simile; Istic queque scripta est, sunt aniles fabule./His fabellas addit plures, non cessando fingere,/ Demones salvandos fore, laudes Deo solvere;/ Quod est nimis inimicum fidei catholice.”

¹⁰¹ On the *Visio Baronti*, see Lawrence Nees, “The Illustrated Manuscript of the *Visio Baronti* [Revelatio Baronti] in St. Petersburg (Russian National Library, Cod. Lat. Oct. v.I.5),” in *Court Culture in the Early Middle Ages. Proceedings of the First Alcuin Conference* (Turnhout: Brepols, 2003), 91–128; John Contreni, “Building Mansions in Heaven: The *Visio Baronti*, Archangel Raphael, and a Carolingian King,” *Speculum* 78 (2003): 673–706; Yitzhak Hen, “The Structure and Aims of the ‘Visio Baronti’: An Analysis of the Typology of Medieval Visionary Literature and the Development of the Idea of the Otherworld,” *Journal of Theological Studies* 47 (1996): 477–97. The *Visio Pauli* is translated in J.K. Elliott and M.R. James, *The Apocryphal New Testament: A Collection of Apocryphal Christian Literature in an English Translation* (Oxford and New York: Clarendon Press and Oxford University Press, 1993), 616–44; for the Latin texts and manuscripts, see Theodore Silverstein, *Visio Sancti Pauli: The History of the Apocalypse in Latin, Together with Nine Texts*, Studies and Documents (London: Christophers, 1935).

¹⁰² Russell, “Eccentrics,” 237–38.

recitations of the daily office, fasts, and prayers in its anecdotes. The *Visio Baronti* culminates in the penitential experience of the monk who is shown the horrors of damnation in his excursion to the underworld. The Letter from Heaven insists that it was relayed through sacerdotal hands. Despite their ties to orthodox practices and institutions, not all of these popular traditions were accommodated by an imperial episcopate interested in “correction” of religious belief.¹⁰³ Celestial letters did not find favour at Charlemagne’s court. The *Libri Carolini*, compiled under Charlemagne’s sponsorship by Theodulf of Orléans, condemned the tradition of the Letter of Christ to Abgar, another miraculous document.¹⁰⁴ The Sunday Letter presented by Adalbert was also condemned by Charlemagne in the *Admonitio generalis* of 789: “Likewise both pseudo-documents and dubious narrations or those things which in every respect are contrary to the catholic faith, and that terrible and false letter, which some erring persons, also placing others in error, said fell from heaven in the past year, are neither to be believed nor read, lest the people be placed in error through such writings. But only the canonical books and catholic treatises and the opinions of saintly authors should be read and taught.”¹⁰⁵

That forceful statement from the emperor regarding the public welfare with respect to orthodox teaching may account for the extensive reports provided by Agobard and Amulo to the imperial court of highly suspect tales they claimed the Jews of Lyons were propounding.¹⁰⁶ The continuing interest in speculative descriptions of the celestial realms is striking. Like the traditions that troubled Boniface in Saxony and Bavaria half a century earlier, stories of multiple worlds, heavens,

¹⁰³ On the concept of “correction” as an impetus for expanding the authority of the clergy over the activities of the subjects of the realm, see Angenendt, “‘Richtige Kult’”; and de Jong, “Charlemagne’s Church,” 105, 122–24, 129.

¹⁰⁴ Gougaud, “La Prière,” 212.

¹⁰⁵ “Item et pseudografia et dubiae narrationes vel quae omnino contra fidem catholicam sunt et epistola pessima et falsissima, quam transacto anno dicebant aliqui errantes et in errorem alios mittentes quod de celo cecidisset, nec credantur nec legantur sed conburentur, ne in errorem per talia scripta populus mittatur. Sed soli canonici libri et catholici tractatus et sanctorum auctorum dicta legantur et tradantur.” Charlemagne, “Admonitio Generalis,” ed. Alfred Boretius, MGH, Leges, Sectio II: Capitularia, I (Hanover: Hahnsche Buchhandlung, 1883), 60. Cf. de Jong, “Charlemagne’s Church,” 105, who links the condemnation of the *Admonitio* to other reproofs, such as that against “men who roamed the countryside naked and in chains, claiming they were performing a penance.”

¹⁰⁶ “De iudaicis superstitionibus et erroribus,” in Agobardus Lugdunensis, *Opera Omnia*, 197–221.

and hells were apparently known in southern Gaul as well. Agobard's account gives further curious details: one of the heavens supports the mills for the manna on which the angels feed; in another God resides, and he has seven very large trumpets.¹⁰⁷ Other specifics were more clearly blasphemous in Christian eyes. Agobard reported the belief that God has a body like a human body, except that his fingers do not bend, because he does no work, and he sits on a throne in a palace, and those thoughts of his which are useless turn into demons.¹⁰⁸ The anthropomorphism seems to have scandalised Agobard particularly because of its approach to idolatry; as he put it, "The Jews worship a simulacrum, which they have concocted, not the true, unconvertable and unchanging God, whom they wholly ignore."¹⁰⁹ Most especially, Agobard was scandalised by stories that degraded Christ's Passion: these seemed to him to show that Jews were malevolently cursing the Lord and his body. He recounted stories now known to resemble episodes in the *Toledot Iesu*, the "Jewish Life of Jesus."¹¹⁰ In them, Jesus, condemned as a detestable wizard, was both stoned and hanged, then buried secretly by Judas near an aqueduct, where no-one could find the body. Although unremarked in Carolingian testimonies, the story of the stoning of Jesus seems to have passed into local Christian popular tradition, for there are 10th-century reports that in Chalon-sur-Saône and Beziers there was the practice of stoning Jews or their houses on Palm Sunday or in Holy Week "because they stoned Jesus."¹¹¹

This same concern about unusual stories is evident in the subsequent appeal for segregation of Jews and Christians made by Agobard's successor as bishop of Lyons, Amulo, although he presented a different set of texts and tales. It appears that Amulo is an early witness to a tradition concerning Jesus' death that finds fuller recounting in the *Toledot Iesu*

¹⁰⁷ Agobardus, "De Iudaicis superstitionibus," 206.

¹⁰⁸ Agobardus, "De Iudaicis superstitionibus," 205–06.

¹⁰⁹ "Sed et innumera infanda de deo, ut diximus, suo praedicant, ac tale colunt simulacrum, quod ipsi sibi in cordium suorum stultitia finxerunt et statuerunt, non verum, inconvertibilem atque incommutabilem Deum, quem penitus ignorant." Agobardus, "De Iudaicis superstitionibus," 206.

¹¹⁰ For the episode described below, see Günter Schlichting, *Ein jüdisches Leben Jesu: Die verschollene Toledot-Jeschu-Fassung Tam u-mu'ad. Einleitung, Text, Übersetzung, Kommentar, Motivsynopse, Bibliographie, Wissenschaftliche Untersuchungen zum Neuen Testament* (Tübingen: J.C.B. Mohr (Paul Siebeck), 1982), 151 (Hebrew text p. 150).

¹¹¹ James William Parkes, *The Jew in the Medieval Community: A Study of his Political and Economic Situation* (New York: Hermon Press, 1976), 42–43.

texts of the 11th century, although the passage is somewhat garbled and truncated. Amulo's testimony is that, fearful that their land would be polluted by the delayed burial of a hanged man, as stipulated in Deuteronomy 21:22 (discussed in the previous chapter), Jews ensured that Jesus was swiftly removed from the cross and cast into a tomb in a garden full of cabbages. The cabbages, initially puzzling, are explicable if one considers this a corrupted report of the story in the *Toledot Iesu* that when "the Godless One" (i.e., Christ) was brought to be hung after his stoning, his executioners fashioned a wooden gibbet for his hanging, but the wood would not bear his weight, because during his lifetime he had sworn that the trees would not bear him for hanging. Judas, therefore, thinking quickly, ran to his garden and cut a cabbage-stalk, so thick that it equalled any tree, and they hanged him on that. As the *Toledot Iesu* explains, "The stalk bore him and held him, since the Godless One had in his lifetime neglected to curse stalks, because he had not considered them as wood for hangings." Whether or not this was the version of the tale known to Amulo, the introduction of cabbages into an account of Jesus's burial indicates that he was reporting a tradition outside the Christian norms.¹¹²

The nature of the case the Lyonnaise bishops presented may have governed their selection of stories to report. Agobard's disapproval of these accounts appears to indicate a dynamic that has been observed in 13th-century sources. Scholars have noted that as the centuries advanced, Christians were faced with an evolving Judaism that had its own accretion of traditions, exegesis, modifications, and innovations. The Jews of the Middle Ages were no longer the Jews of the Old Testament, and, to medieval Christians, Jews were increasingly appearing to be heretics with regard to their own, Jewish faith.¹¹³ As was noted in the previous chapter and above, Amulo, too, by presenting contemporary Jews as distinct from the Jews of Scripture, attempted to build the case that they could be counted as heretics.¹¹⁴

¹¹² Hillel I. Newman, "The Death of Jesus in the *Toledot Yeshu* Literature," *Journal of Theological Studies* n.s. 50 (1999): 63–69, 72–75.

¹¹³ This is the thesis presented in Jeremy Cohen, *The Friars and the Jews: The Evolution of Medieval Anti-Judaism* (Ithaca, NY: Cornell University Press, 1982) While Cohen's work is flawed in many respects, this concept is useful and attested. More sophisticated discussion of Christian responses to Jewish non-scriptural texts is to be found in Dahan, *Les intellectuels chrétiens et les juifs au moyen âge*, 216–20 et passim.

¹¹⁴ Vide supra, p. 86.

Yet there appears to be an additional reason for Amulo's extensive protest against dangerous popular tales. The "fables" that Amulo considered most noxious were those that might supply to Christians an alternative account of salvation history. The "falsehood" that distressed Amulo especially was the Jewish tradition of the two Messiahs. He devoted some 12 chapters to its exposition and appears to have made some effort to apprehend its details. His account of the first Messiah, the Messiah ben David, accords with traditions attested in the Jerusalem Talmud and the Babylonian Talmud, and also in the apocalyptic *Sefer Zerubabel*.¹¹⁵ In Amulo's version, this Messiah was born in Judaea, at the time of the destruction of the second Temple. When an adult, he is at the gates of Rome (Amulo says, "I don't know by what means"), and until the present he has been a recluse in the caves and crypts, imprisoned, weighed down with chains, and wounded all over his body.¹¹⁶ The conglomerate of afflictions reflects a conflation of traditions and sequences: in some accounts he is among the lepers, or the poor and sick. As one modern scholar describes the condition of the Messiah: "he is in appearance disfigured and afflicted, and in essence waiting, unknown, hidden, deferred, detained and captive."¹¹⁷ The afflictions are the vicarious source of redemption for his people: as Amulo recounts it, "They [the Jews] trust that through these wounds they will have indulgence for sins, and there is fulfilled in him what Isaiah said, 'His wounds are medicine for us.'"¹¹⁸ Amulo also knew the tradition that this messiah appeared, dirty and in rags, to the Jewish sage Josue

¹¹⁵ Abraham Berger, "Captive at the Gate of Rome: The Story of a Messianic Motif," *Proceedings of the American Academy for Jewish Research* 44 (1977): 3. Cf. Joseph Dan, "Armilus: The Jewish Antichrist and the Origins and Dating of the *Sefer Zerubbabel*," in *Toward the Millenium: Messianic Expectations from the Bible to Waco*, vol. 77, ed. Peter Schäfer and Mark Cohen, *Studies in the History of Religions* (Leiden: Brill, 1998), 93n, 98–101, for arguments regarding the date of the text.

¹¹⁶ "Ita procedentibus temporibus, et per impietatis magistros succrescentibus indesinenter erroribus in tantum obcaecati sunt, ut finxerunt sibi de proprio sensu duos messias, id est duos Christos: quorum unum dicunt esse velut juxta promissionem Dei, ex genere David: quem et affirmant ea nocte in Judaea natum, quando domus Dei sub Vespasiano et Tito Hierosolymis destructa est et nescio quibus modis Romam esse perductum: ibique usque hodie in speluncis et cryptis abditis esse reclusum: atque in tali ergastulo vinctum ferro, oppressum catenis, et toto corpore vulneratum." Amulo, "Adversus Iudaeos," PL 116, col. 147.

¹¹⁷ Berger, "Captive at the Gate of Rome: The Story of a Messianic Motif," 7.

¹¹⁸ "Et confidunt se per haec vulnera habere indulgentiam peccatorum, et impleri in se quod Isaïas dixit: *et in vulnere eius medicina erit nobis*." Amulo, "Adversus Iudaeos," PL 116, col. 147.

ben Levi and, when he was not recognised, transformed himself into a beautiful old man and identified himself as the messiah who undergoes sufferings for the Jews, will redeem them from captivity, and will come in the end in clouds of heaven, as prophesied in Daniel 7, an important apocalyptic text in both Jewish and Christian tradition.¹¹⁹

The story of the Messiah ben David not only presented Christians with a dangerous refraction of the doctrine that Christ's suffering will redeem men from their sins, his wounds serving as penitential medicine, but also connected that redemptive act to an eschatological vision. Amulo knew too the tradition of the second Messiah, the Messiah ben Ephraim, the apocalyptic figure killed when he goes into battle against Gog and Magog, the figures loosed at the end of time. This story is almost certainly some version of the account in the Jerusalem Talmud and also in the *Sefer Zerubabel* of the Messiah ben Ioseph (known as the Messiah ben Ephraim in other sources, apparently interchangeably), "the deputy Messiah," killed by the Antichrist, Armilus. In the Talmud and *Zerubabel* versions, the Messiah ben David revives him, destroys the Antichrist, and the Kingdom and eternal justice are brought into being.¹²⁰ Amulo's report suggests that Jews enriched their account of the Messiah ben Ephraim with a verse from the prophet Zachariah: "When they look on him whom they have pierced, they shall mourn for him, as one mourns for an only child, and weep bitterly over him, as one weeps over a first-born, and the families of the earth shall mourn,

¹¹⁹ "Habent etiam scriptum in suis traditionibus, quod iste talis messias ostenderit se antiquitus cuidam magno eorum doctore, qui vocabatur Josue Ben Levi: apparuisse autem primum in sordido habitu. Cumque ab illo, ignorante quis esset, corripere cur ita illotus et incultus incederet, repente se mutasse in aliam effigiem, et apparuisse quasi senem speciosum...: cumque hoc factum ille admiraretur, et requireret quisnam esset, respondisse eum: Ego sum messias, qui multas poenas pro vobis sustineo, et vos redempturus sum de captivitate... Hunc ergo talem messiam sperant in finem esse venturum, ad congregandos eos de captivitate (quod solum, ut vilissima mancipia, desiderare noverunt): venturum in nubibus coeli, tanquam de ipso dixerit Daniel propheta: 'Aspiciebam in visione; et ecce cum nubibus coeli quasi Filius hominis veniebat (Dan. 7:13),' et caetera. Et istum nominant messiam Ben David, id est filium David." Amulo, "Adversus Iudaeos," PL 116, col. 148. It should be noted that Amulo describes this tradition as "written."

¹²⁰ On the two messiahs, ben Ioseph and ben Ephraim, see W. Bousset, *The Antichrist Legend: A Chapter in Christian and Jewish Folklore*, trans. A.H. Keane (London: Hutchinson and Co., 1896), 103–11; Dan, "Armilus"; Günter Stemberger, "Jüdische Apokalyptik in Spätantike und Mittelalter," *Jahrbuch der Oswald von Wolkenstein-Gesellschaft* 13 (2002): 11–28. For later medieval responses to the two messiahs, see Dahan, *Les intellectuels chrétiens et les juifs au moyen âge*, 499.

and the families by themselves, and their wives by themselves" (Zech. 12:10–12).

The ways in which extra-canonical traditions could shape readings of Scripture made even more acute the discrepancies between the received Christian meaning and other interpretations. While Jewish exegetes claimed, according to Amulo, that "him whom they have pierced" refers to the Messiah ben Ephraim being pierced in the battle against Gog and Magog, Amulo applied the verse to Jesus, crucified by his own people. Amulo was aware of a difference in the Vulgate and Hebrew texts: the Vulgate reads, "They look *to me* [i.e., God], whom they pierced"; the Hebrew reads, "When they look *on him* whom they have pierced." Amulo accused the Jews of falsifying the text, and, interestingly, he perceived the falsification as a scribal technique: even though, he says, "in terror of the Lord, the Jews do not dare to alter it, and instruct their scribes to *transcribe* it faithfully, nonetheless they *annotate* in the margins so that the received reading is the alternative one." There is, Amulo pointed out, no mention of Gog and Magog in this passage; the text has been speaking of the inhabitants of Jerusalem, and they are the families that will mourn.¹²¹

Amulo used other technical methods of analysing scripture to refute the Jewish reading of the verse of Zachariah, in particular, he practiced the exegetical strategy of linking particular words of a cited text to matching words or images in other biblical texts. In this instance, he followed the apocalyptic tenor of the reported Jewish reading but turned it into a claim that divine punishment for the crime of the crucifixion would figure in the end of history. The lamentation for the pierced one was not only prophesied for the crucifixion in the first coming of the Messiah, Amulo continued, but also referred to the time of the Second Coming: "when the Lord comes to judge, they will see in him the wounds which they inflicted, and for so great an impiety they will

¹²¹ Amulo, "Adversus Iudaeos," PL 116, col. 149: "...illi quamvis in ipso textu libri, divino nutu terrente, non fuerint ausi mutare: tamen extrinsecus e latere adnotatum habent sicut supra posuimus: «Aspicient ad eum quem confixerunt:» et sic tradunt suis discipulis, ut sicut in textu continetur transcribant, sed sicut foris adnotatum est legant. Ut teneant videlicet, quod juxta eorum dementiam, Iudaei aspicient ad eum quem confixerunt, Gog et Magog: cum in hoc loco nulla omnino illarum gentium mentio fiat; sed supra habitatores Hierusalem commemorentur... et de iisdem continuo subjungatur: «et plangent terrae familiae, et familiae seorsum:» id est, familiae domus David, et domus Nathan, et domus Levi, et domus Semei, et omnes reliquae: ut omnino ipsi qui confixerunt, pro tanto scelere plangere intelligantur. "

discern that they are damned. Then will be fulfilled what the Lord says in the Gospel: “Then will appear the sign of the Son of man in heaven, and then all the tribes of the earth will mourn” (Matt. 24:30).¹²² Amulo then added the verse from Revelation that resonates with Daniel 7 as well as Zachariah 12: “Behold, he is coming with the clouds, and every eye will see him, every one who pierced him, and all tribes of the earth will wail on account of him. Even so amen” (Rev. 1:7).¹²³ The entire argument is thus contained within Scripture, without explicit recourse to extra-canonical traditions or texts.

By adducing the Christian texts that re-oriented the meaning of the Hebrew Scripture, Amulo sought to negate the eschatology that posited another Messiah other than Jesus. Using the book of Daniel to conclude his argument, Amulo suggested that the future of the Jews is there to be found for those who read through a Christian lens the verses, “His people are not worthy, who denied him, and killed him. And because of this sin they are bound over to perpetual captivity, ... the prophet [Daniel] confirms that ‘...desolation is decreed; and until the consummation and the end, desolation will continue’” (Dan. 9:26–27).¹²⁴ This bleak fate, in Amulo’s interpretation, is the direct consequence of the Jews’ acceptance of the teachings about the two Messiahs: “thus they have prepared their very own selves with the illusions of the Antichrist.”¹²⁵

Because of the dearth of Jewish writings from western Europe in the 9th century, it is difficult to know whether Amulo’s letter should

¹²² Amulo, “Adversus Iudaeos,” PL 116, col. 150, quoting Peter, “Sive in secundo, cum veniente Domino ad iudicium, videbunt in eo vulnera quae intulerunt: et pro tanta impietate cernent se esse damnandos. Quando implebitur quod Dominus in Evangelio dicit: ‘Et tunc apparebit signum Filii hominis in coelo, et tunc plangent omnes tribus terrae (Matt. 24:30).’” The passage from Matthew continues, “and they will see the Son of man coming on the clouds of heaven with power and great glory,” which matches precisely Daniel 7.

¹²³ It appears that in this chapter Amulo thickens the Johannine foundation of his treatise, by adding two companion texts to the Zacharias verse: John 1:14, “We beheld his glory, glory as of the only Son from the Father,” and Rev. 1:5, “the first-born of the dead, and the ruler of kings on earth: who loved us, and washed us from our sins in his blood.”

¹²⁴ “Ut merito non sit ejus populus, qui eum negavit, et occidit. Et propter hoc scelus traditi sunt aeternae captivitati: de qua licet ipsi sibi liberationem promittant, manifeste propheta confirmat quia ‘finis ejus vastitas, et post finem belli statuta desolatio: et usque ad consummationem et finem perseverabit desolatio (Dan. IX, 27).’” Amulo, “Adversus Iudaeos,” PL 116, col. 150.

¹²⁵ “atque ita semetipsos Antichristi illusionibus totos praeparaverunt.” Amulo, “Adversus Iudaeos,” PL 116, col. 150.

be taken as attestation to an upsurge of Jewish messianism during this period.¹²⁶ It is perhaps suggestive that fragments of correspondence between Amulo's contemporary, the Christian Paul Alvarus, and the famous 9th-century convert to Judaism, Bodo, do refer to Jewish belief in the Messiah in chains. Trying to persuade Bodo to return to Christianity, Alvarus wrote to him, "You are young, and he [the captive Messiah] is an old man by now; you are free and he is in fetters; why are you reluctant to tell me who is guarding him?"¹²⁷ What remains of Bodo's text does include a reference to the messiah born and anointed on the day when Jerusalem was laid waste, a messiah "in chains of iron and fire."¹²⁸ These remarks would seem to indicate that the belief was alive and current.

Bodo's conversion provides useful information not only about Jewish messianic thought but also about Christian understanding of the event. Perhaps to recall to Christian minds the dangers of crossing the boundary of faith, the Carolingian chronicler Prudentius of Troyes reported that following Bodo's conversion there was a flood in Friesland and comets and flaming objects in the heavens: apocalyptic signs.¹²⁹ The association of Judaism and apocalypticism was multivalent, however, and might run either to explication of the role of the Jews in Christian eschatology or to the accusation that Jewish messianism corrupted such eschatology; millenarianism was more than once castigated as a

¹²⁶ Amulo's omissions are interesting: in support of his case he did not refer to any specific contemporary or even recent figures, such as Serene, who in 720 persuaded a number of Spanish and French Jews to dispense of their property with messianic promises. The case may not have suited him, as Serene apparently permitted use of wine obtained from Gentiles and was part of a movement to abandon Talmudic Judaism. Heinrich Graetz and Bella Löwy, *History of the Jews from the Earliest Times to the Present Day*, ed. Bella Löwy, trans. Bella Löwy, vol. 3 (London: David Nutt, 1891), 122–24.

¹²⁷ Cit. Berger, "Captive at the Gate of Rome: The Story of a Messianic Motif," 6–7.

¹²⁸ Bernhard Blumenkranz, "Un pamphlet juif médio-latin de polémique anti-chrétienne," *Revue d'histoire et de philosophie religieuses* 34 (1954): 406–07, repr. in [Bernhard Blumenkranz] *Juifs et Chrétiens: Patristique et Moyen Age* (London: Variorum Reprints, 1977), 401–13 (original pagination).

¹²⁹ Wolfgang Giese, "In Iudaismum Lapsus Est: Jüdische Proselytenmacherei im frühen und hohen Mittelalter (600–1300)," *Historisches Jahrbuch* 88 (1968): 416. Bernhard Blumenkranz discounted the significance of Prudentius's explanation that it was the devil who enticed Bodo to convert, and remarked, "but we are still in the middle of the ninth century, and not in the vicinity of the year one thousand, where the devil nestled everywhere." Bernhard Blumenkranz, "Du nouveau sur Bodo-Eléazar?" *Revue Des Études Juives* 112 (1953): 35–42 (p. 37), repr. in *Juifs et Chrétiens*.

“judaising heresy.”¹³⁰ The charge had been repeated in the 7th century by the Spanish author Julian of Toledo, who condemned both the Jewish calendar and what he erroneously considered the Jewish belief that the Messiah would come in the year (anno mundi) 6000. Such notions, he protested, might “infect” Christians.¹³¹

Julian’s fears regarding Christian interest in calculating the date of the end, an exercise Christian authors since at least the 2nd century had rejected as one of the more dangerous practices in eschatological exegesis, were borne out in the Carolingian period.¹³² A number of surviving calculations suggest that for Christians who were counting, the end of the 8th century looked particularly ominous.¹³³ Although most of the sums led to the year 800, give or take a decade, there were also prophecies of the End in the 840s. In 846, the year after Amulo wrote his treatise, the Annals of Fulda recorded that the Council of Mainz disciplined with flogging the pseudoprophetess Theoda, who, “coming from Alemania to Mainz, disturbed to no small extent the parish of the bishop Solomon with her soothsaying.”¹³⁴

She claimed to know, as though it had been divinely revealed to her, the exact day on which the world would be consumed and other secrets known to God alone. She preached that the last day of the final year was close upon us. Whence many of both sexes were filled with fear and went to her offering gifts and commending themselves to her prayers. What is more serious, they turned from doctrines of the church preached by [clerics] to follow her as though she were a teacher sent from heaven. She was brought before the bishop...and her assertions were diligently

¹³⁰ Richard Landes, “Lest the Millennium be Fulfilled: Apocalyptic Expectations and the Pattern of Western Chronography 100–800 C.E.,” in *The Use and Abuse of Eschatology in the Middle Ages*, Mediaevalia Lovaniensia (Louvain: Leuven University Press, 1988), 142, 206–07.

¹³¹ Landes, “Lest the Millenium,” 172–73.

¹³² On the powerful influence upon historiography and in society of such calculations, see Landes, “Lest the Millenium,” 169–71. Christians usually based the calculation upon the conflation of Augustine’s Six Ages of the World and the 6000-year sabbatical week (“for to the Lord each day is as a thousand years and on the seventh day He rested”). On eschatological calculation within the Carolingian court circle, see de Jong, “Charlemagne’s Church,” 105; and Susan A. Rabe, *Faith, Art, and Politics at Saint-Riquier: The Symbolic Vision of Angilbert* (Philadelphia: University of Pennsylvania Press, 1995), 12, 67, 71.

¹³³ Hermann Fitting, ed., *Juristische Schriften des früheren Mittelalters* (1876; repr. 1965), 186–201; Brandes, “Tempora periculosa sunt.”

¹³⁴ It is an odd coincidence that the “Egyptian magician and pseudo-prophet” (as Amulo describes him) in the Acts of the Apostles was named Theodas (Acts 5:35–36).

examined. She confessed that a certain priest had suggested these things to her and that she had said such things, the cause of complaint. The synod judged that she should be publicly flogged. Whereupon with shame she gave up the ministry of preaching that she had irrationally seized upon and presumed to claim for herself..., and, perplexed, she put an end to her soothsaying.¹³⁵

It seems that for at least a century, in different areas of the Carolingian domains, laity and preachers outside the trained episcopal ranks were collecting and exchanging traditions of religious speculation popularly held to be fully consonant with Christian doctrine. In many areas of the empire, Carolingian clergy were not seeking to instruct an insufficiently or only superficially Christianised populace; in fact, religiosity in some quarters abounded to the point of extending beyond doctrinal limits.¹³⁶ Rather than imagining a Carolingian episcopacy that exercised considerable control over the Christian flock, one may discern an elite corps of bishops and scholars, educated in a demanding but perhaps at times *recherché* hermeneutic, riding out swells of popular piety that they at times perceived as outright heresy, preached by “false priests,” “false Jews,” or “false prophets.”¹³⁷ To the orthodox, such teachers threatened the salvation of the baptised, for by offering illicit paths of redemption—whether by indiscriminate and unauthorised absolution from sin, by the promise of sins born by a scapegoat-Messiah, or by the simple announcement of imminent apocalypse—they diverted

¹³⁵ Trans. Suzanne Fonay Wemple, *Women in Frankish Society: Marriage and the Cloister, 500–900* (Philadelphia: University of Pennsylvania Press, 1993), 145. The text of the annals is reproduced in Conc. Mainz (847), MGH Conc. III, p. 151.

¹³⁶ Mayke de Jong has referred to this as “an undercurrent of disorderly religiosity” (“Charlemagne’s Church,” 105).

¹³⁷ The efforts of the episcopate to bring subordinates under control were distilled in the decrees of synods of 742 and 743, published by Carloman, mayor of palace. Six bishops, led by Boniface, drafted the measures to secure the salvation of Christians so they “not perish through the deceit of false priests.” Carloman claims to have appointed bishops and to have set over them as archbishop Boniface; the concern for governing authority is continued in the decrees that priests are subject to bishops, and that no unknown priests shall be received unless approved by synod. Monks and nuns are to live under the Benedictine Rule; the rigour of the proposed interpretation of discipline is evident in the decree that they shall do penance in prison, with flogging etc., for carnal sin. Corrupt and adulterous clerics shall be expelled from their parishes and made to do penance. Syncretic devotions, such as amulets, and offerings of animals made in churches in the name of holy martyrs or confessors, are rejected. Boniface, *Die Briefe*, 98–102; *Letters*, 91–94; Wilfried Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien* (Paderborn: F. Schöningh, 1989), 50–53.

Christians from the thoughtful understanding of sin and its remedies elaborated in patristic texts.

These elements contribute to the outline of the setting in which Carolingian expansion of episcopal authority, both pastoral and juridical, would be staged. The Carolingian clergy of the late 8th-century was starting to be aware of the power of popular piety and the need to provide pastoral intervention to collectivities, not just to individuals, even in conditions of reduced urbanisation. Some portion of the clergy, dedicated to exegetical practices that could narrow the gap between Scripture and legal texts, strengthened the intellectual foundations for innovations in penitential education and jurisprudence. Some had an interest in having greater authority over their flocks and could perceive in alliances with each other as well as with the imperial court the potential for greater security and preaching authority. Finally, there was a mechanism for joining groups with disparate patterns of education, as the new order of the semi-literate Carolingian aristocracy and the educated but not necessarily socially well-positioned clergy negotiated their differences: the lay and clerical elite could join in a legislative and judicial body with both ecclesiastical and secular authority, the council.¹³⁸

Both legal and penitential practices evolved in the course of encounters between the higher clergy, whose views were shaped by education in law and scriptural exegesis, and the lower clergy, who mediated between the more and less learned members of the Church. Whereas learned heresies would arise among the educated and would be argued with the same textual resources and analytical approaches by the opposing parties, part of the difficulty in dealing with popular heresies lay in the different framework of belief. Popular tales constituted a sort of guerilla exegesis, for which the intellectual refutations of the educated elite were ill suited. Two broad strategies of response thus evolved: one focussed on the purveyors of extra-canonical teaching and constituted a juridical approach in which prosecutions and strengthened judicial systems were components of increased ecclesiastical discipline; the other focused on those who might be led into heterodoxy and took the form of an educational program devised, in part, to counteract

¹³⁸ On councils as a forum for “public affirmations of a political unity that was also a religious one,” see de Jong, “Charlemagne’s Church,” 108.

interest in unsanctioned versions of divine history and the actions of celestial powers.

Both approaches converged on the use of penance as an appropriate means of correction. As an error of belief and a sin against God, heresy called for a measure of sacral atonement and conversion, and those meanings were inherent in penance. As a crime against the community jeopardised by deviant opinion and against the institution compromised by the breach of its protections, heresy was subject to punishment, and the suffering entailed in penance fulfilled the punitive protocols of retribution. As the consequence of legal prosecution, such penance could be coerced. The penitential orientation of pastoral care, however, arose from an emphasis on free will and the correlative responsibility of the individual for the care of the soul. Parallel to Carolingian reservations about the efficacy of forced baptism, such as had been imposed on the Saxons, was the principle that only the authentic stirrings of the sinner's soul could yield efficacious contrition, confession, and penance.

Herein lay the foundations for the so-called "Carolingian dichotomy," usually framed as a contrast between the liturgical forms of public and secret penance. It was the divergence not of form but of intent and context that yielded a sometimes dichotomous set of possibilities. Juridical and pastoral measures would, ideally, operate in effective conjunction, according to circumstances and the persons involved. Upon occasion, however, the requirements of the two ministries might compete, and it was in such situations that a formula such as "public penance for public crime, secret satisfaction for secret sin" could serve as the *regula iuris* invoked to resolve competing juridical and pastoral claims. The dichotomy was one which would be recognised and organised in the distinction of the later Middle Ages between the confessional (the "internal forum") and the ecclesiastical court (the "external forum"). Yet even when parsed into different jurisdictions or rituals, the essential integrity of the process of suffering and atonement remained intact: the image of the thief who entered Paradise contained both the involuntary punishment inflicted by juridical authority and the confession of a soul turning wholly by volition to God, proclaiming, "I was condemned justly."¹³⁹

¹³⁹ See previous chapter, pp. 104–108.

Yet as judicial and pastoral practices developed in the different regions of the Carolingian empire, other dichotomies, contradictions, and lacunae would emerge to test the integrity of sacral punishment and redemptive pleading. The next chapter examines the intersections and divergence of varied legal and educational programs and proposes that in the course of negotiating local traditions and circumstances in the context of increasingly centralised secular power, Carolingian jurists moved from a Roman system of jurisprudence to one so inflected by scriptural exegesis that fundamental processes of prosecution and determination of criminality were radically transformed. Such transformations required the subordination or suppression of legal principles that had been observed in some regions for centuries and the creation of an intellectual apparatus—the seven deadly sins—that could support innovations in legal thought. The changes affected not only perceptions of authority and jurisdiction but also the rights and freedoms of individuals living under the evolving patterns of judicial power. Much of what remains in the textual evidence is as much ideological proposition as legal reality, and often what emerges is the clamor of competing voices asserting the rightness of particular points of view. In the interstices between the community consensus regarding acceptable norms of legal process and the written declarations of juridical theory, malleable memories determined whether the traditions of the past could be reconciled with the innovations of the present, or whether such innovations were insupportable.

CHAPTER FOUR

EMPIRE AND EDUCATION

The absence of procedures in the 8th century that would permit clergy to discipline laity effectively and the prominence of those procedures in the 9th century helps to locate a moment and dynamic of change. It was during the period of Carolingian imperial expansion and the enlistment of clergy as imperial agents, especially on the dangerous frontiers of the empire, that the discourses of penance and law merged. The first and second chapters of this book proposed that by the middle of the 9th century, mingled political and religious perspectives set the stage for the political manipulation of penance and law in the mid-century trial of Theutberga, framed by the constructs of corruption and purgation. The present chapter traces the antecedents of that trial to a radical re-orientation of jurisprudence that occurred during Charlemagne's reign, when court and episcopate allied to promote education in a new framework for penitential analysis and prescribed it in law as a device for interrogation of the laity. Temporarily substituting religious discipline for an effective system of secular law, court and clergy harnessed and directed popular piety toward practices that could help to secure peace, order, obedience to imperial and clerical authority, and trust in the moral quality of both the governors and the governed. This chapter focuses on the application of that penitential framework, expressed in the scheme of the virtues and vices, and on the rationales for the exercise of penitential authority newly articulated in imperial circles.

The seven or eight vices, often presented without reference to their opposing virtues, enabled confessors and penitents to scrutinise souls in systematised confession to be practiced by the laity, with two notable consequences. First, formalised confession and penance expanded clerical authority to judge the character and behaviour of others. Second, instruction in penitential practices had implications for the dominion of lay nobility over their subordinates, and also for the distribution of pastoral authority within the ranks of the clergy, as priests became entrusted with activities previously delivered by bishops. Such developments were, understandably, accompanied by debate as well as acquiescence. To recover some of the concerns of those experiencing the

changes caused by organised penitential instruction, this chapter turns to the decades of the late 8th and early 9th centuries in the Rhineland regions, especially Saxony and Bavaria, for it appears that in those areas, “penitentialism” became prominent in pastoral care in concert with Carolingian assertion of political control. Whereas the previous chapter presented evidence that before the Carolingian project of religious reform, as in 8th-century Austrasia, or in regions where it was less aggressively promoted, as in 9th-century southern Gaul, popular piety could venture beyond the content of authorised doctrine, this chapter offers evidence that, beginning in the 790s, both episcopal instruction and lay piety converged in a consistent penitential piety; this convergence suggests that the imperial program supporting such instruction had fairly immediate success, at least in some regions of the empire. Furthermore, whereas the previous chapter showed bishops lacking either the legal expertise or expectation that canon law could be used to discipline the laity (as in the case of Boniface) or the imperial support to promote their agendas (as in the case of Agobard and Amulo), this chapter traces the infiltration of clerical and imperial expectations for penitential orientation and administration into the ranks of the secular nobility and governing assemblies.

That infusion of penitential theology into political discourse had profound effects on the formation of law in the Carolingian period, in particular in the legislative assemblies convened across the empire in an ambitious effort to integrate imperial and religious social renovation. As Charlemagne sought to secure greater control in previously autonomous zones by installing bishops and abbots who owed him allegiance, thus shifting the center of political gravity from the Gallic provinces of the Roman empire to the northern and eastern regions taking shape as the heartlands of Carolingian authority, members of his court circle expounded theories of pastoral care that emphasised penitential perspectives. Concerted episcopal efforts extending from the imperial court to the borderlands produced both new texts and new interpretations of standard texts that supported an intensely penitential vision of Christian society. The wide dissemination of that penitential vision in writing and preaching to all levels of society was tightly linked to the redistribution of political and judicial authority in the newly annexed eastern domains of Charlemagne’s hegemony. There, penitential perspectives and practices overtook many of the conventions of secular jurisprudence, by offering new modes of accusation, new domains of guilt, and new forms of punishment. While it seems

unlikely that penance was consciously selected as a device for obtaining political dominance, coinciding agendas for political reformation and religious re-education elevated the value of submission to authorities in these regions. Once again, as in the case of Theutberga, the largely invisible experience of Carolingian laity can partially be glimpsed in the story of a woman whose life was profoundly affected by the Carolingian promotion of penitential activity, and this chapter begins with her.

*Liutberga's confessions: The court of conscience in the
Carolingian Rhineland*

A Saxon hagiographer writing around *a.*880, imagining how a Saxon noblewoman chose to be enclosed as a solitary penitent about 80 years earlier, described in some detail how she made her life-transforming confession. The *Life* of the holy woman Liutberga is generally regarded as one of the earliest texts from Carolingian Saxony and is believed to have been composed in the second half of the 9th century.¹ The text is extant in two redactions, both considered nearly contemporary, although they are known now only from 15th-century manuscripts, one in Bamberg and one in Brussels.² The *Life* details the entry into religious life by a laywoman, Liutberga, after her service to a noble patroness of religious houses and the patroness's son and heir, first as handmaid and then as estate manager.³ Although Liutberga is never presented in the text as a canonised saint, her great virtue and spiritual superiority are

¹ A summary of the arguments about the date of the life is in Suzanne Wemple, "Late Ninth-Century Saints Hathumoda and Liutberga," in *The Joy of Learning and the Love of God: Studies in Honor of Jean Leclercq*, ed. E. Rozanne Elder, Cistercian Studies Series vol. 160, (Kalamazoo, MI: Cistercian Publications, 1995), 45 n. 8.

² There is a partial edition of the *Life* in the *Monumenta Germaniae Historica* [hereafter MGH], *Scriptores* [hereafter Script.] 4, 158–64. A complete edition, used here, is Ottokar Menzel, ed., *Das Leben der Liutbirg. Eine Quelle zur Geschichte der Sachsen in karolingischer Zeit* (Leipzig: K.W. Hiersemann, 1937). The German translation, Ernst Witte, trans., *Das Leben der Liutbirg*, *Die Geschichtsschreiber der Deutschen Vorzeit*, 3 (Leipzig: E. Wiegandt, 1944), has useful notes. The Bamberg manuscript (Staatlichen Bibliothek, Cod. hist. 141; olim E.III.9), has been traced to the Benedictine monastery of Michelsberg in Bamberg. Both surviving manuscripts are believed to have derived from a lost Fulda manuscript: Menzel, *Liutbirg*, 4. Fulda was a monastery credited with sending "no fewer than seventy or eighty missionaries to Saxony between 775 and 777"; Alessandro Barbero, *Charlemagne, Father of a Continent*, trans. Allan Cameron (Berkeley, Los Angeles, and London: University of California Press, 2004), 242.

³ Menzel, *Liutbirg*, 13–15.

affirmed in the narrative's focus on her choice of the penitential life of a solitary and her subsequent visions and religious knowledge.

After serving her patrons well, tending successfully not only their properties but also their children, and gaining an admirable reputation for her care for the indigent, as well as for her learning and piety, Liutberga undertook strenuous vigils and fasting and finally determined that, "a greater sinner than any," seduced by the temptations of this world, and having neglected her youthful intention to become a nun, she felt compelled to enter religious seclusion for the rest of her life to atone for her sins.⁴ Rather like the unspecified but (in the view of its perpetrator) very dark sin that led to the catharsis and conversion of St. Augustine, the sins that led Liutberga to petition for the severe penance of individual enclosure are never named by her biographer. A certain tact may be discerned in the literary omission of the specifics of Liutberga's sin, for her biography begins with a substantial exposition of her connection to the noble house of Hesse, and the genealogical details, as well as the laudatory drift, suggest that members of the house may have been readers or implicit dedicatees of the text. This, then, was a biography possibly shaped to satisfy, even include, lay nobility as well as affiliated religious. The effect of leaving the sin unknown but the penance fully exposed is not only to insert some level of moral conflict and movement in the narrative but also to present the penitential attitude as one suitable to even the seemingly innocent, and as a mode of life to which anyone might aspire. In this respect, the *Life* recreates the spiritual model of the *Lives* of the Desert Fathers but situates that model in a landscape that was accessible to Saxon Christians.

Liutberga's *Life* is especially noteworthy for its attention to problems arising from the absorption of a new penitential ethos among the laity: the text is thickened with allusions to canon law and an *excursus* into the intellectual resources of the new penitential curriculum taught in Carolingian schools. It considers in particular the problems posed to a nobility sensitive to the prerogatives of both social rank and judicial authority but, in penance, entering into relationships of submission and humility. The course of penitential education directed at the laity raised pressing questions about its implementation in a society structured on the premises that secular lords had both authority over their dependents and the obligation to administer justice in their domains.

⁴ Menzel, *Liutbirg*, 20.

The introduction of a penitential option as the remedy for transgression and the further complications that the transgression might or might not be known, and might or might not be prosecutable, challenged the paradigm of social order and secular justice.⁵ These topics are woven into the *Life's* detailed exposition of Liutberga's conversion from her role as a pious, powerful, and respected servant in the house of Hesse to a new identity as a solitary penitent.

As was the case for Theutberga in the divorce proceedings, Liutberga's transition in status hinges upon the act of confession. In the *Life*, Liutberga makes three confessions: the first two are preparatory to her enclosure, the third is upon her deathbed. In the Bamberg manuscript, chosen by Ottokar Menzel as the primary text for his edition, Liutberga makes her initial confession to the count whom she serves as estate-agent and from whom she seeks leave to retreat from the world as well as a place for her hermitage. The narrator's elaboration of their conversation is rich in ambiguities that admit interpretations both of sacral confession and feudal compact. Permitting her to state her petition, the count seems to draw from the penitential discourse regarding the secrecy of the soul never hidden from God when he says to Liutberga, "Speak, I ask; do not seek to hide those things which are in your soul."⁶ The ritual aspect of the conversation is further intimated both in the count's invocation of God as the one by whose dispensation he would act, and Liutberga's tears and sighs when she confesses: "I am a great sinner, lord, and fettered in many chains, who has until this point, weak in all desires, passed a life astray in the sensual pleasures (*voluptatibus*) of this world, detained utterly here and there in course of wandering and forgetful, even internally unaware, of my promise which I made to the Lord. Finally I ask your piety for a place somewhere to stay, so that I may keep the remaining time of my life in penance for my sins and for the benefit of those who have asked to accomplish works of mercy in me, wretched for God's sake."⁷ Reminding that count that he and his

⁵ For an excellent demonstration of the conflict between penitential ideology and the norms of secular justice around the years 801–03, see Hélène Noizet, "Alcuin contre Théodulphe: Un conflit producteur de normes," *Annales de Bretagne et des pays de l'Ouest* 111 (2004) [special issue: "Alcuin, de York à Tours: Écriture, pouvoir et réseaux dans l'Europe du haut Moyen Âge"]: 113–29 (pp. 120, 123–29).

⁶ "Dic, quaeso; quae sint in animo tuo, abscondere noli." Menzel, *Liutbirg*, 19.

⁷ "Peccatrix nimium...in multisque vinculis detenta sum ego, quae...in omnibus desideriiis delicatam et in huius mundi voluptatibus erroneam vitam peregi...et promissionis meae, quam Domino promiseram, oblita penitus et ignara. Tandem locum

deceased mother would be rewarded because the Lord said, “whatsoever you do for one of my little ones, you do for me,” Liutberga closes her request also with a quotation from the apostle James: “whoever brings back a sinner from the error of his way will save his soul from death and will cover a multitude of sins.”⁸

Although her request for release from employment and a place to live would appropriately be sought from a secular lord and would seem the essential basis for her petition to the count, the count’s posture in the story is similar to that of a confessor listening to Liutberga’s declaration of her sinful condition. The religious tint of the count’s authority over his servant Liutberga in the story was sufficiently problematic that the redactors of the different versions of the *Life* seem to have wanted to clarify the canonical requirements of the situation. On the one hand, the fourth canon of the Council of Chalcedon (A.D. 451) decreed that no slave might become a monk without the knowledge of his master; the canon was well known, and it circulated in standard Carolingian canon law compilations.⁹ That negative formulation, however, did not convey to the slave’s master a positive power to consecrate. Because of the proposed change of life to a religious condition, albeit without entry into any cloister, the author of the *Life* felt constrained to establish that

alicubi manendi pietatem tuam deposco, ut residuum tempus vitae meae in poenitentia delictorum perseverare valeam ac pro beneficiis eorum, qui in me misera propter Deum opera misericordiae frequentare, rogitare.” Menzel, *Liutbirg*, 20.

⁸ “Quod, ut credo, tibi, domine mi, et venerandae memoriae matri tuae perpetuatis munere felicius redonetur, Domino dicente: ‘Quod uni ex minimis meis fecistis, michi fecistis,’ et secundum apostoli Iacobi sententiam dicentis: ‘Qui converti fecerit peccatorem ab errore viae suae, salvabit animam eius a morte et operit multitudinem peccatorum.’” Menzel, *Liutbirg*, 20.

⁹ “Nullum vero recipere in monasteriis servum obtentu monachi, praeter sui domini conscientiam.” Norman Tanner (English editor), *Decrees of the Ecumenical Councils*, 2 vols. (London and Washington, DC: Sheed and Ward and Georgetown University Press, 1990), 1:88. For a register of early medieval canon law collections containing this canon, consult Linda Fowler-Magerl, *Clavis Canonum: Selected Canon Law Collections Before 1140: Access with Data Processing*, MGH, Hilfsmittel (Hanover: Hahnsche Buchhandlung, 2005). Among them are the preeminent reference collections known across the Carolingian empire: the *Collectio Hispana*, the *Collectio Dionysiana* (*Dionysio-Hadriana*), and the *Collectio Dacheriana*. See also Conc. Francofurt. (a.794) cap. 12: “Ut reclusi non fiant, nisi quos ante episcopus provinciae atque abbas comprobaverint, et secundum eorum dispositionem in reclusionis loco ingrediantur”; also cap. 23: “De servis alienis: ut a nemine recipiantur neque ab episcopis sacrentur sine licentia dominorum.” Ed. Albert Werminghoff, *Concilia Aevi Karolini (I) [742–842] I*, MGH Concilia [hereafter Conc.] II, 1 (Hanover: Hahnsche Buchhandlung, 1906), 168.

it was not in the count's authority to grant Liutberga's request; it could only be done with the permission of ordained clerics.¹⁰

The two versions of the *Life* differ somewhat in how they convey this point, suggesting some uncertainty over the canonical norms governing the situation. The Bamberg manuscript offers the explicit information that because Liutberga's proposal was to take up the life of a solitary, a form of piety "hitherto unknown in these parts," it was necessary to consult with "not only priests, but also the bishop, more than with laity."¹¹ In the Bamberg account, Liutberga and the count agree to defer any decision until they can obtain the counsel of the clergy; priests and bishops then gathered and deliberated long and hard over Liutberga's proposition.¹² The Brussels manuscript treats the matter more lightly, omitting the meeting of the clergy, but it does clarify that it should be the bishop, rather than priests or laity, who gives his permission to Liutberga, and thus is somewhat more weighted toward episcopal authority than the Bamberg account.¹³ In both redactions, the process by which Liutberga obtained release from the mastery of one lord and entered into the jurisdiction that governed religious was clarified by the insertion of sentences depicting a stage of clerical action, although the redactions differ as to whether Liutberga's reception into religious status need be decided in synod or simply as the exercise of episcopal prerogative.

¹⁰ Canons reserving to a bishop the right of consecration of a virgin are cited in Elena Lucia Bolchi, *La consacrazione nell'Ordo virginum: Forma di vita e disciplina canonica*, Tesi Gregoriana: Serie Diritto Canonico, 56 (Rome: Editrice Pontificia Università Gregoriana, 2002), 15–17. Control over a person's entry into religious life was an area in which the dominion of secular lords was susceptible to challenge, and thus complicated medieval rules concerning personal liberty.

¹¹ "Huc usque prolatis solitariam atque seclusam et a ceteris in commune viventibus sequestratam temptas suscipere vitam et hactenus his locis insolitam"; "Ad hoc utique sacerdotum necnon et pontificis nostri plus quam laicorum adhibenda sunt concilia." Menzel, *Liutbirg*, 20.

¹² "Ultimam ergo rationationis eorum causam pontificis ac sacerdotum congrue ventilandam ac sagaciter deliberandam prolixioris temporis spatio decreverunt." Menzel, *Liutbirg*, 21.

¹³ In the sentence, "Igitur antistes una cum comite tantam in ea mirantes animi constantiam iudicio communi decreverunt fieri, quod poposcerat," the Brussels manuscript has, instead of *antistes*, *episcopus*. Menzel, *Liutbirg*, 25. The Brussels text also replaces the ambiguous "governors" (*rectores*) of the church who deliberated in the Bamberg manuscript with "priests and other holy men" (*sacerdotum et aliorum religiosorum virorum*), perhaps to avoid any implication that lay sponsors had any authority to participate in an exclusively ecclesiastical decision. Menzel, *Liutbirg*, 21.

Part of the value of the *Life* as an historical source is that it captures a moment when confession was becoming an important social, political, legal, and spiritual gesture, yet when practice had outstripped explication and when the forms and meanings were unfixed. It was especially the incorporation of the non-criminal laity into penitential practices that created special uncertainties and prompted debate over the correct form for the confession of sins. Three considerations guided the arguments: whether the expected return for confession would be an imposed penance, whether the gravity of the sin required special ministration, and whether the role of confessor was general and potentially assumed by any Christian or was inherently reserved to certain members of the clergy. Carolingians had inherited the tradition that penance could be imposed only by a cleric of the higher orders.¹⁴ Confession need not be requited with penance, however, and thus there was another tradition that confession might be made to a lay person, in hopes of obtaining counsel and prayer.¹⁵ A related issue was that from the early Christian period, grave sins (homicide, adultery, idolatry) had fallen within the purview of the bishop, who alone administered solemn penance and the release of solemn penitents from their exclusion from the Christian community.

A significant change in penitential discourse, however, offered a broader description of sin and also shifted enquiry regarding sin from action to intention or motive. The penitentials encapsulated but a small portion of the moral education newly available to the inhabitants of

¹⁴ While it may have been the prevailing opinion that only bishops and priests could hear confessions, there are traces of discussion about the possibility of extending the practice to deacons. The issue seems to have arisen in the context of laity making confessions; there survive statements that it was not permitted to a deacon, but only to a priest or bishop, to assign penance to a lay person. Advocating limited access to texts for use in penitential judgements, the *Poenitentiale Pseudo-Romanum* and the *Poenitentiale Merseburgense* argued that, because only bishops and priests were granted the keys to the kingdom of heaven and can offer the Eucharist, so too only they can render sacral judgement: "Non enim omnes clerici hanc scripturam usurpare aut legere debent, qui inveniunt eam, nisi soli illi, quibus necesse est, hoc est presbyteri. Sicut enim sacrificium offerre non debent nisi episcopi et presbyteri, quibus claves regni coelorum traditae sunt, sic nec iudicia ista alii usurpare debent. Si autem necessitas evenierit, et presbyter non fuerit praesens, suscipiat diaconus poenitentem ad satisfactionem vel sanctam communionem." Hermann (F.W.H.) Wasserschleben, *Die Bußordnungen der abendländischen Kirche* (Graz: Akademische Druck- u. Verlagsanstalt, 1851; repr. 1958), 361, 389.

¹⁵ Amédée Teetaert, *La confession aux laïques dans l'église latine depuis le VIII^e jusqu'au XIV^e siècle: Étude de théologie positive* (Wetteren and Paris: J. de Meester et fils; J. Gabalda, 1926), 28–29.

Carolingian Francia; the literate, whatever their rank and status, could find a plethora of written rules to guide them through the universe and could, if so inspired, report them to the illiterate. There were rules for monks and nuns, such as the Benedictine Rule, which, after a period of apparently loose observance, became doubly Benedictine after its revival and renewed promotion in Carolingian realms by Benedict of Aniane (c.750–821). There were rules for the laity, helpfully set forth and explained in the *Institutiones laicali* of Jonas of Orléans, the *Liber exhortationes ad Henricum* of Paulinus of Aquileia, or Alcuin's *De virtutibus et vitiis*, composed for the count of the Breton March, Wido.¹⁶ Another *Liber de conflictu vitiorum et virtutum* has been ascribed to Ambrosius Autpertus (d. c.778). Works for royalty included the *Via regia* by Smaragdus of St. Mihiel, the *De institutione regia* of Jonas of Orléans, the *De ordine palatii* and *De regis persona et regio ministerio* of Hincmar of Rheims, as well as his *De cavendis vitiis et virtutibus*, the *Liber de rectoribus Christianis* of Sedulius Scottus, as well as countless letters and poems containing moral instruction.¹⁷

As with many epoch-making shifts in sciences, the revolution in moral theology represented in these works was the consequence of a particularly effective model of classification. The taxonomy of the virtues and vices provided a clear, vivid, and systematic description

¹⁶ These may be consulted in J.-P. Migne, *Patrologiae cursus completus: Series latina* (Paris, 1844) [hereafter PL]; Jonas of Orléans, *De institutiones laicali*, is in vol. 106, cols. 121–278; Paulinus's *Liber exhortationes* is in vol. 99, cols. 197–282; Alcuin's *De virtutibus et vitiis* is in vol. 101, cols. 613–38. For manuscripts and bibliography on the latter, see Marie-Hélène Jullien and Françoise Perelman, *Clavis des auteurs Latins du moyen âge territoire Français, 735–987*, tomus II: Alcuin (Turnholt: Brepols, 1999), 153–59. On the “ethical treatises” written for Carolingian laity and their presentation of the battle against the vices, see Thomas F.X. Noble, “Secular Sanctity: Forging an Ethos for the Carolingian Nobility,” in *Lay Intellectuals in the Carolingian World*, ed. Patrick Wormald and Janet L. Nelson (Cambridge: Cambridge University Press, 2007), 8–36 (pp. 8–10). Alcuin's use of conflicting vices and virtues as an especially apt form of instruction for a judge and military leader, and its penitential orientation is discussed by Willemien Otten, “The Texture of Tradition: The Role of the Church Fathers in Carolingian Theology,” in *The Reception of the Church Fathers in the West from the Carolingians to the Maurists*, ed. Irena Backus, 2 vols. (Leiden: Brill, 1996), 1:3–50, at pp. 24–31. More extensive discussion of the treatise is in Alain Dubreucq, “Autour du *De virtutibus et vitiis* d'Alcuin,” *Annales de Bretagne et des pays de l'Ouest* 111 (2004) [special issue: “Alcuin, de York à Tours: Écriture, pouvoir et réseaux dans l'Europe du haut Moyen Âge”]: 269–88.

¹⁷ Smaragdus' *Via regia* is in PL 102, cols. 131–970. Hincmar, *De cavendis vitiis et virtutibus exercendis*, ed. Doris Nachtmann (Munich: MGH, 1998); Hincmar, *De ordine palatii*, ed. Thomas Gross and Rudolf Schieffer (Hanover: Hahnsche Buchhandlung, 1980); Sedulius Scottus, ed. Sigmund Hellmann (Munich: Beck, 1906).

of human behaviour that could be applied directly for the correction of social and political ills and that also accorded well with theological knowledge. While Morton Bloomfield, the author of the classic study on the seven deadly sins, was at some pains to emphasize that the scheme was not as influential as some made it out to be, its impact on the moral and penitential treatises circulating in the Carolingian realms was transformative.¹⁸ Although discussion of the virtues and vices or capital sins may be traced to works by John Cassian and Gregory the Great, such a quest for pedigree ignores the magnitude of the explosion of such analysis in Carolingian sources. Through the *speculum principis* and *via regia* treatises, through homilies, through poetry and encomia, through biblical exegesis, liturgical events, and through the prefaces to penitentials in Carolingian manuscripts ran the lists (still varying) of the capital vices and sometimes the virtues that combatted them.¹⁹ Directives sent by bishops to their suffragans called for knowledge of the system.²⁰ Synods issued decrees establishing it as the scientific foundation for pastoral care.²¹ Artists and sculptors illustrated it.²²

¹⁸ Bloomfield's work, *The Seven Deadly Sins: An Introduction to the History of a Religious Concept, with Special Reference to Medieval English Literature* ([East Lansing]: Michigan State College Press, 1952), is being substantially revised by Richard Newhauser: see his *The Treatise on Vices and Virtues in Latin and the Vernacular*, *Typologie des sources du Moyen Age occidental* (Turnhout: Brepols, 1993); and his *In the Garden of Evil: The Vices and Culture in the Middle Ages* (Toronto: Pontifical Institute of Mediaeval Studies, 2005); for his reflections on the discourse of the vices in the early Middle Ages, "Zur Zweideutigkeit in der Moralthologie: Als Tugenden verkleidete Laster," in *Der Fehltritt: Vergehen und Versehen in der Vormoderne*, ed. Peter von Moos, *Norm und Struktur: Studien zum sozialen Wandel in Mittelalter und früher Neuzeit*, 15 (Cologne, Weimar, Vienna: Böhlau, 2001), 377–402.

¹⁹ A helpful review is in Rainer Jehl, "Die Geschichte des Lasterschemas und seiner Funktion," *Franziskanische Studien* 64 (1982): 261–359.

²⁰ Raymond Étaix, "Les instructions aux pénitents de pseudo-Pontifical de Poitiers," *Revue Des Études Augustiniennes* 30 (1984): 297–302.

²¹ E.g., Conc. Rispacense (a.798) "Ipse episcopus... clericos suos doceat, qualiter ipse vivit, ut non sint superbi, non sint luxuriosi..."; Conc. Moguntinense (a.813): De fictis virtutibus et veris vitiis discernendis...; Conc. Cabillonense (a.813): "Imputatur quibusdam fratribus, eo quod avaritia causa hominibus persuadeant, ut abrenuntiantes saeculo res suas ecclesiis conferant quod penitus ab omnium mentibus eradicandum est. Animarum etenim salutem inquirere sacerdotes..."; idem: "Sed et hoc emendatione indigere perspeximus, quod quidam, dum confitentur peccata sua sacerdotibus, non plene id faciunt... Instruendus est itaque peccatorum suorum confessor, ut de octo principalibus vitiis... confessionem faciat..." MHG Conc. 2,1, pp. 199, 266, 275, 279.

²² Adolf Katzenellenbogen, *Allegories of the Virtues and Vices in Mediaeval Art from Early Christian Times to the Thirteenth Century* (London and Nendeln: The Warburg Institute/Kraus Reprint, 1968); Jennifer O'Reilly, *Studies in the Iconography of the*

With its analysis of the causes of both many pollutions and crimes as rooted in deep and personal dysfunctions, the system of virtues and vices could be conjoined to descriptions of other religious disorders that called for therapeutic measures. In his description of sin, Julianus Pomerius wrote, "You have asked me to what extent simulated virtues differ from true virtues. I shall not say the difference is the same as between poison and medicine. Sometimes the curative effect of medicine upon the body is so hampered as to be powerless to defend it from the necessity of death; and as for poison, it does not take life from the body as though it would not have been taken away if poison had not been used, but it only hastens the death of a body which would perhaps have lived a little longer."²³ While ostensibly denying the analogy, Julianus Pomerius instills in readers the idea that vices are toxic to the soul, and virtues prophylactic.

The Carolingian adoption of the system of the capital sins, with its capacity to encompass minor failings as well as capital crimes, as the primary device of penitential education meant that confessors had to determine suitable responses to a radically enlarged range of sins and crimes committed by the entire Christian community, not just those vowed to ascetic discipline or those who had committed grave sins. Matching the authority and expertise of the confessor to the variety of confessions was thus among the problems faced by Carolingian theorists of penance. Varied perceptions of the role of the confessor contributed to the variety of practices: any Christian aware of another's sin and need could offer prayer, but sacramental absolution required the special ministerial capacities of an ordained cleric.²⁴ There was also the practice, known in some quarters, of confession directly to God, sometimes specified as acceptable in cases of necessity.²⁵ The variety

Virtues and Vices in the Middle Ages, Outstanding Theses in the Fine Arts from British Universities (New York: Garland, 1988).

²³ Julianus Pomerius, *The Contemplative Life*, trans. Mary Josephine Suelzer, Ancient Christian Writers (Westminster, MD: Newman Bookshop, 1947), 102.

²⁴ Teetaert, *La confession*, 31–32.

²⁵ Penitential texts associated by later editors with the name of Theodore, the *Capitula Dacheriana* and the *Canones Gregorii*, found in Carolingian manuscripts, cite the canon "Confessio Deo soli, si necesse est, agi licet" three times: Wasserschleben, *Die Bußordnungen*, 150, 158, 164. The same compilations represent, on the one hand, the view that a deacon is not permitted to determine penance for a layperson and, on the other hand, a deacon as well as a priest or bishop may hear a confession. "Non licet diacono laico judicare poenitentiam, sed episcopis aut presbyteris." Wasserschleben, *Die Bußordnungen*, 151.

of further possibilities is reflected in canons that note that confessions may not be made to women, only to priests.²⁶

In the *Life* of Liutberga, the abstract and theological precepts regarding confession are subordinated, as they no doubt were in life, to the realities of social organisation. The dilemma faced by the author was how to reconcile the requirements of canon law and the negotiated patterns of authority in a region where counts governed and exercised judicial authority and where bishops had hitherto largely disciplined and directed other clerics. Steering a middle course, Liutberga's biographer ensured that in the *Life*'s account, she canonically delivered a second confession as a secret one (further implying that no grave sin was at issue) to a bishop. Deference to comital authority, however, is conveyed by the literary stratagem of having the bishop just happen to visit the count, his good friend, at the moment when Liutberga was seized by the confessional urge.²⁷ The politics of lay and ecclesiastical authority are thus embedded in the narrative, although they do not drive the plot.

Even so, the two redactors of the *Life* seem to have given different readings to the delicate balance of power negotiated by the bishop as he considered the request of his host's servant to become an anchoress and penitent. After Liutberga prostrated herself before him, declaring herself a sinner—and, in the Bamberg version, guilty of innumerable crimes (*innumerabilium delictorum ream*)—the two redactions diverge. In the Brussels version, the bishop, after asserting the need for deliberation, had the count summoned and asked him whether the sorrowing Liutberga had rejected good counsel when she sought to be secluded from all human society.²⁸ The ostensible point of the conference between bishop and count was to obtain assurance that Liutberga's petition was no whim, that she had previously demonstrated her commitment to following her vocation. The more vivid image actually created by the narrator is a scene of fraternal discussion in which Liutberga's superiors—count and bishop—confer paternally over her welfare. In the Bamberg redaction, there is no such co-operative consultation. Instead,

²⁶ "Mulieris non est licitum alicui poenitentiam indicare, quia in canone nullum licitum est, nisi solus sacerdotibus." Wasserscheleben, *Die Bußordnungen*, 165. Teetaert, *La confession*, 6, remarks that this canon is derived from the Council of Hippo, a.393.

²⁷ The bishop, Theotgrimum, has been identified by scholars as the bishop of Halberstadt (fl. 827–40). Menzel, *Liutbirg*, 21.

²⁸ Menzel, *Liutbirg*, 22 (cap. 17, note b).

the author takes the opportunity to place in the mouth of the bishop a lengthy sermon on the ways in which the soul falls into sin.²⁹

The sermon begins with a concise and didactic explanation of the Augustinian precept that every rational soul is good and inclined toward the good but can be misled in its estimation of the good and, hence, drawn to sin.³⁰ To illustrate the spiritual dangers that beset and may deceive the soul in its quest for good, these chapters of Liutberga's *Life* present the personified vices as the various troops arrayed for battle along the road (the narrow way specified by Scripture) that Liutberga proposes to take toward God: Pride, who bears her ensign of victory not only in evil deeds but also in good ones;³¹ Avarice, wielding weapons drenched in the blood of one's fellows;³² Luxury, holding hostages in alluring castles of delights;³³ the cohort of Gluttony, Greed, and Lust manning the palisades;³⁴ Anger, supported by the poisoned spears of Envy and Hatred;³⁵ Arrogance, some of whose troops are Deception (*Simulatio*), painted with various colours, and her comrade Falsehood, protected by a veil;³⁶ the pit of Fraud and the snares of Sorrow also appear.³⁷ The author then turns to Scripture for the promises that

²⁹ There is an inconsistency in the edited text with respect to the auditor of the sermon: it is introduced as directed to the count—"episcopus ait ad eum"—but concluded as having been directed to Liutberga: "talibus namque dictis cum eam praesul ammonuit." This discrepancy results from the interpolation of the sermon in the Bamberg text: if omitted, the counsel of the bishop and count is what is relayed to Liutberga. Menzel, *Liutbirg*, 22, 25.

³⁰ Menzel, *Liutbirg*, 22: "Omnis rationalis creatura, quae in sanctis spiritibus et hominibus consistit, bona est et ad bonum intendit, sed diverso tramite incedens, ad illud, quod adventat venire, disiunctione semitarum ab omnibus minime pervenitur." The verse "omnis creatura dei bona est" (1 Tim. 4:4) was one of Augustine's favourites, to judge from its citation in his letters (47, 55, 82, 166), the Commentaries on John (Tract. 73), the Ennarrationes in Psalmos (on Ps. 125, 141), sermon 21, De fide et operibus (cap. 4), Contra Faustum (VI:7, VI:8, XIV:11, XV:8), De Act. cum Fel. (I:7, I:12), De natura boni contra Manicheos (cap. 34), Contra Julianum (three citations in Book VI). Witte, *Das Leben der Liutbirg*, 41, notes that the inclination of the soul to good was also expounded by Boethius, *Consolatio Philosophiae*, 3.2 and 3.12.

³¹ "Superbia... quae non solum in malefactis, sed etiam in benefactis victricia signa sustollit."

³² "Avaritia fallanx... fraterno madentia sanguine hactenus arma praeponit."

³³ "Ex una denique parte luxuriae castra diversis delicata deliciis numerositatem populorum retentat."

³⁴ "Ex illa gula gastrimargiaque, cupiditatis ac libidinis collegae, vallatae considunt."

³⁵ "Hic ira facibus armata, illic invidiae odiiue venenata densantur iacula."

³⁶ "Hic arrogantiae turmae, illic simulatio variis fucata coloribus ac socio falsitatis protecta velamine."

³⁷ "Hic fraudis fovea lat patens voragine, illic doli decipulae millenis circumquaque defossis occultantur laqueis."

the Christian can withstand the vices and concludes that the aroused faithful, whether with a soul already secure or purged through penance, almsgiving, or prayer can be freed from the snares of the enemy because the power of Christ destroys the empire of the vices and breaks their bonds.³⁸

This sermon functions in the context of the Bamberg redaction of the *Life* as a rationale for changing the distribution of authority across secular and ecclesiastical jurisdictions. Although reminiscent of a school exercise in its somewhat arcane vocabulary, it nevertheless is an illuminating specimen of the new discourse of culpability that would affect political competition for power at the local level because it altered the rationales for jurisdictional claims. In the coalescing topography of power in a polity in which ecclesiastical interests were becoming as prominent as secular ones, recourse to the paradigm of the seven capital sins and related analyses of the virtues and vices generated a remarkably effective means of recasting jurisdictions. By transposing culpability from external acts or conditions with effects on the community to internal conditions and motives, the culpable agent became not the social member but the soul, and jurisdiction belonged to ecclesiastical authorities. The concept proved exceptionally effective in the expansion of ecclesiastical jurisdictions in that it required no concomitant relinquishing of jurisdiction over external acts or conditions, as most, if not all, could be directly attributed to the malfeasance of the disordered soul. Herein lay the foundations for a therapeutic approach to social ills that would shape much of western law for centuries to follow.

As so often in Carolingian texts, the shifting premises of legal argument are signalled by the use of a verse from the Bible that contains the seed of a juridical concept. In this instance, both redactions are in accord regarding the canonical conditions of Liutberga's encounter with the bishop. In the text preceding the bishop's sermon on the vices, the author clarifies that Liutberga's interview with the bishop was a model of lay confession of sins, and notes that as "according to what is in Scripture, 'the just is first accuser of himself'" (Prov. 18:17) so

³⁸ "His...periculis fidelis animo expergefactus...divino munitus suffragio, horrificos adversariorum cuneorum tumultus mens provida longe praenosces, quae prius criminum suorum ponderibus vel secuta fuerat vel per poenitentiam vel elemosinarum donis aut orationum instantia purgata laqueis inimici liberata recesserat,...divino se per omnia commendans praesidio tantae molis impetum facile superabit...quia virtus Christi, quae eorum destruxit imperium, eorum principem aeternis vinculis mancipavit." Menzel, *Liutbirg*, 24.

Liutberga, “recalling that she was a sinner, protested that she was guilty of innumerable crimes.”³⁹ The scriptural tag from Proverbs ties the passage to the arguments made by Carolingian clerics for the necessity of lay confession, and to their particular style of building those arguments from biblical verses. The royal chaplain and pre-eminent scholar Alcuin is credited with having first used scriptural evidence in his arguments for the necessity of confession, and the verse from Proverbs is among his citations.⁴⁰ The same verse was used by Jonas, bishop of Orléans (d. 843), in his *De institutione laicali*, a work addressed to the count of Orléans, in his explanation that “it is the custom of the church to confess grave sins to priests, through whom men are reconciled to God; rare are those who make confession to a neighbour of everyday and minor sins, except for monks, who do so daily. But that mutual confession really ought to be made of light and daily sins is evident from the following: Jesus son of Sirach said “Do not be ashamed to confess your sins” (RSV Sir. 4:26; Vulg. Eccli. 4:31), and elsewhere [it is written] “the just man is the first accuser of himself” (Prov. 18:17)...”⁴¹

³⁹ “Illa namque, secundum quod scriptum est ‘*iustus in primordio sermonis accusator est sui*,’ peccatricem se commemorans et innumerabilium delictorum ream protestabatur esse, eiusque commissis peccatis implorans suppliciter auxilium et, quae mente tegebat, incunctanter exposuit.” Menzel, *Liutbirg*, 21–22.

⁴⁰ Teetaert, *La confession*, 18; Alcuin, Epp. 138. Description of this letter, list of manuscripts, and bibliography are in Jullien and Perelman, *Clavis des auteurs*, 2, 256–57. The letter is directed against those who do not wish to confess to a priest. As cited, the proverb is truncated, and its continuation, “his friend cometh, and shall search him,” is omitted. Alcuin, “Epistola 138,” ed. Ernst Dümmler, MGH, *Epistolae* [hereafter Epp.], IV (Karolini Aevi II) (Berlin: Weidmannos, 1895), 218. It is possible that the term “friend” was disliked by proponents of confession to clergy alone, or it may have simply seemed redundant. The frequently cited verse from James 5:16, “Therefore confess your sins to one another, and pray for one another, that you may be healed” (RSV; Vulg.: *Confitemini ergo alterutrum peccata vestra et orate pro invicem ut salvemini*), was shaded in Alcuin’s exegesis to shift the idea of confession to an equal to one of confession to an authority with special qualifications in his escalating rhetoric: “What does it mean to say “to one another,” unless a man to a man, a criminal to a judge, a sick man to a doctor? (*Quid est quod dixit: “alterutrum,” nisi homo homini, reus iudici, aegrotus medico?*)” “Epistola 138,” 217. The relationships other than the first, that between a man and a man, cannot be inverted and retain sense.

⁴¹ Teetaert, *La confession*, 30 n. 1. “Moris est ecclesiae de gravioribus peccatis sacerdotibus, per quos homines Deo reconciliantur, confessionem facere; de quotidianis vero et levibus quibusque, perrari sunt qui invicem confessionem faciant, exceptis monachis, qui id quotidie faciunt. Quod vero de levibus et quotidianis peccatis confessio mutua fieri debeat, sequentia manifestant. Jesus filius Sirach dixit: Non confundaris confiteri peccata tua (Eccli. 4:31). Et alibi: Justus in principio accusator est sui (Prov. 18:17).” *De institutione laicali*, lib. I, cap. 16 (PL 106, cols. 152–54).

Other Carolingian authors repeated the verse with the same interpretation as a proof for the necessity that laity confess their sins and make their confession to priests, or at least to another person. The use of “the just man is the first accuser” in this context seems to have been largely limited to a group of clerics who were especially active in the promotion of penitential activity and who were either involved in religious education in the Carolingian Rhineland or associated with the royal court, or both: Hrabanus Maurus, of Fulda and Mainz; Haimo of Auxerre, another monk of Fulda who studied with Hrabanus under Alcuin; and Amalarius of Metz, thought perhaps to have studied with Alcuin.⁴²

These clerics were following the frequent use of the verse by Gregory the Great, whose perspectives on the requirements for efficacious penance shaped a number of critical aspects of Carolingian penitentialism.⁴³ In their reading of the Proverb, these clerics drew particularly upon a passage in Gregory’s *Moralia in Job*.⁴⁴ His elaboration of “the just man is the first accuser” in the *Moralia* moves beyond the declarative content of the verse and considers the exceptions and possible exploitation of the rule: he notes that there will be those who, seeking to appear just, will accuse themselves quite freely. Self-accusation, then, may not be adequate proof of the sincerity of a confession, which to be authentic must be given with full humility. This approach to the verse apparently resonated forcefully with Carolingian anguish over false, manipulated, or manipulative confessions.⁴⁵ It will be recalled that voluntary confession, self-accusation, was a late and unusual procedure in Roman law; also, Christian discourse, especially Gregory’s, regarding voluntary confes-

⁴² Haimo, *Comm. in Isaiam*, 2:50, *Hom. de tempore*, 97; Amalarius, *Liber de ordine antiphonarii*, cap. 32. The passage is also quoted by Smaragdus of S. Michel in his *Diadema monachorum*, cap. 16.

⁴³ Gregory cites the verse in the *Moralia in Job*, 8:20, 22:15, 24:9, in the Homilies on Ezechiel 1:7, and in Ep. 52 (ad Secundinum), a letter known widely in the forged version presented in the Pseudo-Isidorian decretals—see Detlev Jasper and Horst Fuhrmann, *Papal Letters in the Early Middle Ages*, History of Medieval Canon Law (Washington, DC: Catholic University of America Press, 2001), 74–76, 168.

⁴⁴ That this passage should be so influential is not surprising, for the work was the “manual for morals” (“le ‘manuel’ de morale du haut moyen âge”): R. Wasselynck, “Les compilations des *Moralia in Job* du VII^e au XII^e siècle,” *Recherches de Théologie ancienne et médiévale* 29 (1962): 5. *Moralia* 22:15 is quoted by Jonas of Orléans, *De institutione laicali*, later in the chapter containing the explication cited above. Hrabanus quotes it in his *De videndo deum, de puritate cordis et modo poenitentiae libri tres, ad Bonosum abbatem*, 3:19, in PL 112, cols. 1261–1332, at col. 1326.

⁴⁵ Vide supra, Chapter One, pp. 42 ff.

sion provided creative views of a juridical novelty. A salient feature of Gregory's pastoral analysis was his presentation of conscience as a court.⁴⁶ In that court within, then, would transpire the drama of prosecution, accusation, confession, judgement, and submission that takes place in a court of law. Gregory's writings inserted the court of conscience into legal discourse and, in effect, established another forum or tribunal for prosecution. The most startling requirement of the interior court is that the culprit is not a defendant but a prosecutor of the self.

As Carolingians developed their penitential practices, Gregory's juridical language and imagery provided rich potential for the expansion of spiritual jurisdiction. It also complicated pastoral ministry by suggesting that juridical reasoning might be applied to spiritual direction. With respect to religious confession, the clerics presented here as "penitentialists" found in Gregory's work a solution to the problem that self-accusation in the court of conscience might be false. Gregory had explained that the true humility, and hence religious validity, of a confession was proven when the person confessing did not defend himself against the accusations of others. One might be willing to appear righteous by pre-emptively, as it were, declaring oneself a sinner, but acquiescing to the accusations of others as well demonstrates the humility that infuses a genuine confession of guilt.⁴⁷ By suggesting that the presence of another would serve directly or indirectly as the confirmation of the truth of a confession, Gregory's commentary on "the just man is the first accuser" supplied Carolingian penitentialists with a rationale for having a priest present as an arbitrator in the court of conscience. It was axiomatic that there could be no fair and proper legal proceeding without a certain complement of personnel: "it is necessary in every judgement that there be four persons present: that is, the elected judges and accusers and advocates for the defense and witnesses," as Hincmar reminded his readers when he wrote of the flawed procedures in the judgement of Theutberga's case.⁴⁸

The melding of pastoral and juridical precepts is epitomised in the transposition of Gregory's scriptural reflections into the Carolingian legal corpus. The Gregorian reading of Proverbs 18:17 passed into the widely cited Pseudo-Isidorian decretals, a Carolingian compilation of

⁴⁶ See Carole Straw, *Gregory the Great: Perfection in Imperfection*, Transformation of the Classical Heritage (Berkeley: University of California Press, 1988), 215–16.

⁴⁷ Gregorius Magnus, *Moralia*, 1116 (lib. 22 cap. 15).

⁴⁸ Vide *supra*, Chapter One, p. 43.

juridical opinions presented in the form of papal letters, and was fully familiar to Hincmar of Rheims, who used it in his strenuous legal battle against his nephew and namesake, Hincmar of Laon.⁴⁹ In its citation of “the just man is the first accuser,” the *Life* of Liutberga illuminates both the extent to which juridical arguments passed into more popular literary genres and also the success of the somewhat peculiar notion that it is beneficial for a culprit to become his own interrogator and judge, to assume responsibility for his own culpability and also to participate in the process of determining just retribution.

The *Life*’s recourse to learned discourse concerning confession and penance is additionally evident in the Bamberg redaction’s representation of the sermon given by the bishop in the presence of the count regarding sin. Occupying three chapters, it is a description of a psychomachia, the battle of the vices and virtues in the soul, and it rebalances the architecture of the *Life* so as to feature this substantial exposition of the new discourse of culpability.⁵⁰ The late antique model for such texts was, of course, the *Psychomachia* of Prudentius, which has been shown to have received especially intense study, second only to that of the Bible, in the Carolingian schools of Bavaria, Alemannia, and the Rhineland in the Carolingian period.⁵¹ A seemingly original composition, this portion of the *Life* is marked by the unusual vocabulary and more complex syntax characteristic of a scholastic exercise, and these chapters thus reveal further how the educational curriculum

⁴⁹ Paul Hinschius, *Decretales Pseudo-Isidorianae et Capitula Angilramni* (Leipzig, 1863; repr. Aalen, 1963), 736 (Decreta Gregorii ad Secundinum); Hincmar, *De cavendis vitiis et virtutibus exercendis*, MGH Quellen zur Geistesgeschichte des Mittelalters, 16, ed. Doris Nachtmann (Munich: Monumenta Germaniae Historica, 1998), capp. 1, 8; and *Opusculum lv capitulorum adversus Hincmarum Laudunensem*, in *Die Streitschriften Hinkmars von Reims und Hinkmar von Laon 869–871*, ed. Rudolf Schieffer, MGH Conc. 4, Supplementum 2 (Hannover, Hahnsche Buchhandlung, 2003) cap. 48.

⁵⁰ The orthography of the Bamberg manuscript and its careful preservation of early forms of names led Ottokar Menzel to opine that its text of the *Life* is very close to the original. Menzel, Menzel, *Liutbirg*, 4, 5, 9. I have taken this to indicate that, although unique to this manuscript, the chapters on the virtues and vices are a Carolingian elaboration, especially in view of the popularity of Prudentius in the time and place of the *Life*’s composition. On the transmission of the *Life*, see Loren J. Samons II, “The Vita Liutbirgae,” *Classica et Mediaevalia* 43 (1992): 273–85.

⁵¹ Sinéad O’Sullivan, *Early Medieval Glosses on Prudentius’ Psychomachia: The Weitz Tradition*, Mittellateinische Studien und Texte (Leiden and Boston: Brill, 2004), xix, xx, 28–29, 32, 34–37. “His popularity is attested, for example, in the numerous instances in which he is used to refute heresy and in the sheer number of Old High German glosses that his works attracted—more than any other non-biblical author in the early medieval period...the glosses...highlight the significance of this work, seen as a kind of Bible by its early medieval commentators” (p. xx).

supported the transformations in legal and penitential practices in the eastern regions of the empire.⁵²

Although derived from the *Psychomachia* of Prudentius, the *Life's* portrait of the vices has modifications that tie it to other models of penitential education. Whereas Prudentius gives primacy to the virtues as the protagonists against whom the vices venture in the battle, the author of the *Life* notes only the forces of the vices endangering the soul. Furthermore, in contrast to the number and variety of Prudentius's vices (which include Discord or Heresy, Worship of Old Gods, and such evils as Sleeplessness, Meanness, Hunger, Ostentation), the vices of the *Life* are essentially the seven capital sins, aided only by deceit, falsehood, and fraud.⁵³ In this respect, the Liutberga text conforms more to the Carolingian confessional instructions for penitents, who were asked to analyse their malfeasance according to these categories of vice.⁵⁴ From the number of texts framed on the seven or eight capital sins that can be located in Alemannia, Bavaria, and northern Francia in the late 8th and the 9th centuries, it can be deduced that the region saw quite a rapid, intense, and deliberately constructed program of penitential education in this period.⁵⁵

Such penitential education, as richly represented in the *Life* of Liutberga, was holistic in that it connected knowledge of the soul and its vulnerabilities to ideas about the arrangements for the exercise of human authority over both the bodies and souls of others. The teachings relayed in the *Life* took into account the social and political contexts in which the laity operated, and they charted a route of accommodation for the effects one's penitential actions would have on others. The dual

⁵² O'Sullivan notes that the Weitz glosses on Prudentius are part of a commentary tradition, rather than being random or spontaneous, indicating that the text routinely received systematic study. O'Sullivan, *Glosses*, xxii.

⁵³ The vices in the *Life* appear in the order in which they are often presented in penitentials: Pride (superbia), Avarice (avaritia), Lust (luxuria), Anger (ira), Gluttony (gula), Envy (invidia), sadness (tristitia). This, the "SALIGIA" order, so named from the initial letters of the Latin names, is noted by Richard Newhauser as especially popular after the 12th century: Newhauser, *Treatise on Vices*, 192. For tabulation of the order of the vices in several early medieval and Carolingian texts, see Dubreucq, "Autour du *De virtutibus et vitiis* d'Alcuin," 276.

⁵⁴ Vide infra, p. 202. For another instance of an early medieval text that lies somewhere between a psychomachia and an exposition of the capital sins, see Gernot Wieland, "Aldhelm's *De octo vitiis principalibus* and Prudentius' *Psychomachia*," *Medium Aevum* 55 (1986): 85–92.

⁵⁵ Especially significant is the geographical distribution of surviving manuscripts of penitentials, many of which use the framework of the capital vices. Vide infra, note 88.

obligations to seek permission for a change of position in the social network and to submit to authoritative direction were depicted in the detailed attention to the protocols of Liutberga's confession, as was the balance of comital and episcopal power over her. As penitential endeavours among the Carolingian laity spread, the question of who had authority to direct religious choices that had social and political impact became newly vexing. Laity were invested with increasing spiritual authority as they gained the knowledge and skill to accuse themselves in the court of conscience.

Courts of any sort, however, are places where the motions of thought and argument may have repercussions in the evaluation of other situations. A trope that had been intended to help Christians understand sin and redemption, namely that they should imagine themselves in a court, on trial and seeking deliverance, affected the development of statutory law and procedure. Self-prosecutions for non-criminal offenses in the court of conscience invited reflection upon matters not aired in courts of law. Although the capital vices seemed a simple paradigm for checking moral culpability in confession, their use as a forensic device in confession altered the tenor of western legal proceedings. Whereas Roman law was structured around action and personal status as factors in assessing liability, from the Christian court of conscience came interest in both the intentions of the accused and the social effects of the crime as factors that could mitigate or intensify the gravity of a transgression. The scales of Christian justice weighed the needs of the individual soul for healing and the ethical considerations that defined the violation.

Exploration of the connection between the motions of the soul and their social context is found in another didactic text available in the Carolingian Rhineland. The *Little Book on the Battle of the Vices and Virtues* (*Libellus de conflictu vitiorum atque virtutum*) was written in the late 8th century by Ambrosius Autpertus, monk and briefly abbot of the Italian abbey of St. Vincent (near Capua), who sent it to "Lantfrid the priest, established as an abbot in Bavaria," identified by scholars as Landfrid, the first abbot of Benediktbeuern, founded around A.D. 740.⁵⁶ Like a psychomachia, Autpertus' treatise also presents the virtues

⁵⁶ Two Munich manuscripts have the rubric "missus ad Lantfredum presbyterum et abbatem in Baioaria constitutum." Ambrosius Autpertus, *Ambrosii Autperti Opera*, ed. Robert Weber, Corpus Christianorum, Continuatio Mediaevalis [hereafter CCCM], vol. 27B (Turnholt: Brepols, 1975), 877–78.

fighting their specific oppositional vices, but the conflict is a debate rather than a military encounter. This literary construction allows for ethical arguments not entertained in the elegant allegorical portraits offered by Prudentius. For example, Autpertus's vices Cupidity, Hardheartedness (Obduratio), Theft, and Fraud argue that the condition of need is in part a rationale for their crimes.⁵⁷ They are refuted by the virtues Contempt For the World, Mercy, and Innocence, who all quote Scripture in their explications of righteousness (another textual trait not in Prudentius).⁵⁸ Innocence's affirmation that it is better to be poor and lacking than to harm anyone through theft or fraud is similar to the position taken by the author of the *Life* of Liutberga: when entertaining the possible argument a thief or robber might make, that to satisfy need is a recognised good, the author affirms that the path of crime never leads to any good.⁵⁹ Whether or not this shows that the author of the *Life* was familiar with the *Libellus de conflictu virtutum et vitiorum*, the texts seem to share a common discourse regarding the ethical considerations arising from the contingencies of crime.

⁵⁷ "Cupiditas dicit: Valde sine culpa es, quod quaedam habenda concupiscis, quia non multiplicari appetis, sed egere pertimescis, et quod male alius retinet, ipse melius expendis" (cap. 16). "Obduratio dicit: Si ea quae possides egentibus tribuis, unde subiectos absque penuria nutris?" (cap. 17) "Furtum et fraus, quamquam gradus habeant locutionis, unum est tamen quod dicunt. Furtum enim dicit: Si aliena non tollis, ex proprio vel dives vel sufficiens esse non vales. Fraus dicit: Si cuncta quae tibi praelatus servanda committit inlibata consignas, et ne modicum quid reservandum existimas, unde vel propriis utilitatibus consulis, vel amicis et commilitonibus places?" (cap. 18). *De conflictu*, 920, 922, 923.

⁵⁸ From such biblical references come powerful images of successful penitents. In answering Despair (Desperatio, cap. 15), Hope (Spei Fiducia) recalls the redemption of David, guilty of both adultery and homicide, of Manasses, most criminal, impure, and foul in all his sins, of Mary Magdalene, riddled with innumerable stains of fornication, of Peter, who resolved by his tears his denials of Christ, and of the Thief, here convicted both of sedition and bloodshed, who passed into Paradise with one cry of confession from his cross. *De conflictu*, 920. These are the penitents referred to by Gregory the Great; vide supra, p. 108. While Prudentius mentioned biblical figures whose lives were noteworthy for their aspects of virtue or wickedness, he did not introduce penitents.

⁵⁹ "Fur igitur vel latro per violentiam ac latrociniarum rapinam ad sufficientiam, quam summum autumat bonum, se posse pervenire delectat. Sed non eo tramite ad bonum ullo modo pervenitur." Menzel, *Liutbirg*, 22–23. This is a precursor to the scholastic debate over whether the hungry man who steals bread is culpable, a debate usually resolved in the 12th century in favour of the thief. For discussion of the problem and the precept "need knows no law," see Brian Tierney, *Medieval Poor Law: A Sketch of Canonical Theory and Its Application in England* (Berkeley: University of California Press, 1959), 33–35, 38.

Such expositions of the possible relation between the moral condition of the individual and his or her social situation show how the factors of intention and ethical considerations complicated guilt. No longer could simple compensation remedy physical damage or injury. In the morally oriented analysis of guilt emerging in Carolingian legal discourse, both the personal and social fabric needed repair. The interior condition of the culprit required change, and the social conditions that permitted or encouraged Christian souls to succumb to the vices should be improved. As noted earlier, the Carolingian rhetoric of “correction” is a valuable clue to the ideology of moral repair that connected pastoral and legal agendas.⁶⁰ A damaged or malfunctioning society might either cause the accused to commit a crime, or might result from the commission of a crime by the accused. The ambition to govern both the disposition of individual souls and an empire produced the distinctive Carolingian program of imperially sponsored “reform,” a program which entailed both education and legislation.

Both the laity and clergy needed education in penitential jurisprudence; the legislation that would be proposed had to resolve a number of uncertainties and conflicts in the modification of legal and religious proceedings. Extending the reach of the judicial purview to the interior of individual required appropriate personnel to oversee the enquiry, and in greater numbers: as the number of courts of conscience multiplied, so did the number of priests serving as confessors multiply, but not without debate. A role hitherto reserved to the bishop was entrusted to priests, and with new ramifications. Just as the penitent had multiple roles in the court of conscience, so did the priest: he was to be judge, inquisitor, advocate, witness, therapist. He was enlisted as an ally in battle against the vices; he was cast as a surety for truth in the crucial judgement of the sinner by God. Changing the expectations for clerical *mores* and professional capacities began, however, at the episcopal level, where there was close contact with the imperial court. The sponsorship of the court and the infusion of ideas from a consortium of bishops produced a compelling set of legislative and educational initiatives, and that is the next topic for discussion.

⁶⁰ On “correctio” as a significant component of the Carolingian “reform” or “renaissance,” see Philippe Depreux, “Ambitions et limites des réformes culturelles à l’époque carolingienne,” *Revue historique* 623 (2002): 721–53 (pp. 732–37). See also the chapter on “*Correctio*, knowledge and power” in Rosamond McKitterick, *Charlemagne: The Formation of a European Identity* (Cambridge: Cambridge University Press, 2008), 292–380.

"Fear is the beginning of wisdom": Penance at the frontiers of empire

How the linked processes of education and legislation evolved can be discerned in the Carolingian use of one of the less prominent writings in the patristic corpus, the *On the Contemplative Life* (*De vita contemplativa*) of Julianus Pomerius.⁶¹ This text seems to have shaped the penitentialist agenda for early 9th-century synods. Although Boniface cited this work in a letter of A.D. 747, the first author to make extensive use of the *De vita contemplativa* after its composition was Chrodegang, bishop of Metz, who used it in his *Rule for Canons* (*Regula canonico-rum*), written in the mid-8th century.⁶² It was in the next generation, however, that Chrodegang's ideas gained the political support necessary for their advancement from a set of regulations for a community of canons to legislation known throughout the empire. Pomerius's treatise has been given insufficient attention in modern scholarship, but its importance in the Carolingian period is increasingly recognised.⁶³ Although not an exposition of the capital sins in its structure, it is informed by knowledge of the classification of vices and is all the more interesting for its more complex composition.⁶⁴

Recent examination of the work has noted that Pomerius "provided a theology and spirituality for the non-monastic religious..." and

⁶¹ At present, the only readily available printed edition of *De vita contemplativa* is in PL 59, cols. 415–529, a reprint of a 1711 edition. Translations are *Contemplative Life* and *La Vita Contemplativa*, trans. Mario Spinelli, Collana di Testi Patristici (Rome: Città nuova editrice, 1987).

⁶² Summary description of the recensions of the text and manuscripts of the *Regula canonico-rum*, as well as bibliography, are in Jullien and Perelman, *Clavis des auteurs*, 1, 273–75. Jerome Bertram, *The Chrodegang Rules: The rules for the common life of the secular clergy from the eighth and ninth centuries. Critical texts with translations and commentary* (Aldershot and Burlington, VT: Ashgate, 2005) is not oriented around textual scholarship. See the very important review article by Julia Barrow, "Chrodegang, his rule and its successors," *Early Medieval Europe* 14 (2006): 200–12, for excellent discussion of the *Regula canonico-rum* and its impact in subsequent Carolingian and English contexts.

⁶³ The two studies that still comprise the core scholarship are Max Ludwig Wolfram Laistner, "The Influence During the Middle Ages of the Treatise *de Vita Contemplativa* and Its Surviving Manuscripts," in *Studi e Testi* 121–26 [vol. 2, *Miscellanea G. Mercati*] (1946), 344–58; and Jean Devisse, "L'influence de Julien Pomère sur les clercs carolingiens: De la pauvreté aux V^e et IX^e siècles," *Revue d'Histoire de l'Église de France* 56 (1970): 285–95. More recent and useful discussion is to be found in M.A. Claussen, *The Reform of the Frankish Church: Chrodegang of Metz and the Regula Canonico-rum in the Eighth Century*, Cambridge Studies in Medieval Life and Thought (Cambridge and New York: Cambridge University Press, 2004), 184–203.

⁶⁴ The third book of the work discusses the virtues and vices. Cf. discussion of the *De vita contemplativa*, Chapter Two, *supra*, pp. 97–99, 101.

“redefined the contemplative life in such a way that the active life of a bishop, and incidentally that of priests, fully qualified for it.”⁶⁵ In this, *De vita contemplativa* was a perfect companion text to writings of Gregory the Great, who saw the ideal bishop as both practicing active service to his fellows and also restoring his spirit with the penitential exercises of the contemplative life. Gregory’s extensive reflections upon the spiritual security of monasticism, wherein the soul was purified and protected by penitential asceticism, and the sacrifice of that serenity and safety by those who returned to the world to minister and preach, folded monastic experience into the qualifications of the episcopate.⁶⁶ This view of balancing and integrating contemplative and active ventures theoretically reduced the dichotomous choice between forms of religious life that seemed to separate and then make rivals of monastic and secular clergy. By adopting the Gregorian (and Pomerian) model of the late-antique monk-bishop, Carolingian bishops could appropriate the spiritual superiority of the monastics who had gained recognition among the Merovingian royalty and nobility and could support the episcopate’s judicial and teaching authority with moral authority.⁶⁷

The process by which this ideology took hold and evolved (generally known as “the Carolingian reform”) can be traced through the sequence of surviving conciliar texts. Between the mid-8th century and the mid-9th century, the councils attended by Alemannian and Bavarian clergy changed in their aspect, eventually issuing lengthy compilations of salient passages from Gregory, Pomerius, Augustine, Jerome, and Isidore as the conciliar record. The evolution of the conciliar proceedings correlates to changing configurations of secular power: as Charlemagne reduced the autonomy of regional rulers and either placed or supported his own favoured allies in bishoprics, the written records of the councils become markedly more theological. The confluence of the Pomerian vision of the clergy’s sanctity, the interest in the virtues and vices that had been stimulated through study of Prudentius and other works, and imperial ambitions for greater control over the

⁶⁵ Claussen, *Chrodegang*, 201, 202.

⁶⁶ Straw, *Gregory the Great*, 181–84.

⁶⁷ Cf. Claussen, *Chrodegang*, 145–46. The classic study of the moral authority of the ascetic bishop is Philip Rousseau, *Ascetics, Authority, and the Church in the Age of Jerome and Cassian* (Oxford: Oxford University Press, 1978); see now Claudia Rapp, *Holy Bishops in Late Antiquity: The Nature of Christian Leadership in an Age of Transition*, The Joan Palevsky Imprint in Classical Literature (Berkeley: University of California Press, 2005).

eastern domains produced changes in both the form of law and the structures of adjudication. Law in the Carolingian sphere of influence became heavily inflected by theology, and a penitential ethos pervaded ecclesiastical jurisprudence.

That the Frankish polity, especially in the eastern domains, was infused with penitential discourse as a result of imperial intervention can be seen by examining the balance of secular and religious authority in the periods immediately before and immediately after Charlemagne's accession to the throne. Advancement of the Gregorian/Pomerian ideology to the level of legislative prescription seems not to have occurred until Charlemagne removed from power the autonomous Duke Tassilo, whose dominance over the legislative activity of Bavaria is imprinted on both the conciliar texts of the region and also the secular compendium known as the *Lex Baiwariorum*, the "Law of the Bavarians." Relations between Tassilo and the Bavarian clergy can be discerned to some extent by the records of a short series of councils held under Tassilo's sponsorship between the mid-750s and the mid-770s.⁶⁸

The first of these, the Council of Ascheim (A.D. 756), was a synod that sent its proceedings to the duke probably soon after his accession to office and may be read, it has been argued, as a clerical statement of advice to the young prince on the governance of his domains.⁶⁹ The first canon seems a strong statement of clerical loyalty to the new ruler, for it declares that any cleric, whether priest or monk, found not offering prayer at every opportunity for the welfare of the kingdom and its governor should be deposed. The dependence of the Church upon the secular ruler is indicated by the content of the other canons, which concern the protection of ecclesiastical properties, powers, and immunities established during prior reigns. Not only property but also personnel were the object of the council's legislation: the canons specified the rights and obligations of episcopal oversight of offerings and tithes conveyed to priests, as well as the disciplinary expectations for abbots, abbesses, monks, and nuns. Although the power of the ruler seems to shadow the entire text, the welfare of the subjects was clearly at the fore, and attention was given to the need for protection of the poor, widows, and orphans from abuse and oppression. The council

⁶⁸ On these assemblies, see Wilfried Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien* (Paderborn: F. Schöningh, 1989), 90–96.

⁶⁹ Hartmann, *Die Synoden*, 90–91. The acts of the council are edited in MGH Conc. II, 1, pp. 56–58.

also invoked the processes of the secular judiciary and use of the *Lex Baiwariorum* for the administration of justice, although the final canon argued that a priest ought always to be present in the court, so that sentences be godly and uncorrupted by bribes, and that the innocent not be harmed and the malicious excused. That proposal for clerical participation in the judicial process, however, was more than balanced by the concession that secular law is the governing authority. The canons themselves draw upon the *Lex Baiwariorum*, and the close relation of the Bavarian synods held during Tassilo's reign and the *Lex Baiwariorum* is also evident in the manuscript transmission of the synods: the canons of both the councils of Dingolfing (A.D. 770) and Neuching (A.D. 771) are preserved only in manuscripts containing the *Lex Baiwariorum*.⁷⁰ Both the language of the texts and the manuscript evidence thus reflect extensive integration of secular and ecclesiastical law.

The merging of secular and religious law is also apparent in the distinctive effort in the canons of the Council of Ascheim to connect the legal provisions with justification from the Bible, in a foreshadowing of the type of juridical reasoning that later is a prominent feature of Carolingian canon law. In the Ascheim canons, however, the verses are oddly construed, and bear meanings that will subsequently be replaced with others that become standard, even to the degree that they seem to be *regulae iuris*, the maxims that encapsulate established legal principles. Canon 3 of the Council of Ascheim interprets the episcopal power of the keys of heaven to bind and loose (Matt. 16:19), later taken as the definitive statement of clerical (especially papal) authority over souls, as referring to episcopal power over ecclesiastical property.⁷¹ The 11th canon, which states that governors (*presides*), judges, centurions, and vicars should ensure that no unjust calumny should contribute to the oppression of the poor, adduces the Gospel phrase, "He has put down the mighty from their seat, and exalted the lowly" (Luc. 1:52) but makes no mention of ecclesiastical care of the poor or of any appeals

⁷⁰ Details and further bibliography may be found in Hartmann, *Die Synoden*, 93–94, 93 n. 20. Allusions to the *Lex Baiwariorum* are noted in the apparatus to the text in the MGH and are signalled in Hartmann's discussion.

⁷¹ MGH Conc. II, 1, p. 57. "De potestate episcoporum, qui claves polique ligandi atque solvendi deveuntur et curam pastorem exerceunt in plebe, unde et sine dubio rationem reddituri sunt, ut ecclesiasticis rebus dominantur atque spensando provideant. Unde synodus Nicenensis ait, ut omnes res ecclesiasticas in potestate episcoporum sint." The editor notes that there is no such provision in the canons of Nicea.

to episcopal rather than secular jurisdiction.⁷² Canon 12, prohibiting the alienation of inheritances established in Bavarian law, cites Luke 6:37 (= Matt.7:1), "Judge not, that ye be not judged."⁷³ These attempts to gloss secular law with scriptural tags suggest amateur construction of the canons. Conciliar texts of the Carolingian period are usually much better informed about the precedents and legal phrasing to be adopted. Because of the happy circumstance that the scriptural citations include Matthew 16:19 and Luke 6:37, two verses that attain prominence in penitential discourse, it is possible to determine that they had not yet acquired powerful penitential associations for the notaries inscribing the canons of Ascheim.

The same pattern of ecclesiastical and ducal co-operation, largely in service of maintaining the *status quo*, seems to have continued through Tassilo's tenure. If the Council of Ascheim was the bishops' proposal to Tassilo for the direction of his regime, the councils of Dingolfing (about 100 km northeast of Munich) and Neuching show a matured Tassilo in firm control of his dukedom. The councils were held under his sponsorship, and they conform more to the model of a general assembly of both lay nobility and eminent clerics, rather than to that of a church synod. The balance of power, or at least the balance of interests, rested in these assemblies on the secular side.⁷⁴ These

⁷² Cf. Tierney, *Medieval Poor Law*, 40, 42–44. Cp. the passage in the *Instructio Pastoralis* of Arno, (discussed below), which explains that it is the calling of the priest to resist all who oppress his flock, to free them from the power of the mighty, to stand up for the poor, widows, and orphans. Arno's text (Latin) is found in Raymond Étaix, "Un manuel de pastorale de l'époque carolingienne (*Clm* 27152)," *Revue Bénédictine* 91 (1981): 120.

⁷³ This verse is among those most frequently cited in the Pseudo-Isidorian decretals. The Council of Ascheim also supplies Tobit 4:16, "Do not do to others what you do not wish done to you" as a rationale for the decree that priests should strive to limit their use of offerings or tithes for their own needs; this verse also is one of the most frequently cited by the Pseudo-Isidorian forgers, but with different import. See Abigail Firey, "Lawyers and Wisdom: The Use of the Bible in the Pseudo-Isidorian Forged Decretals," in *The Study of the Bible in the Carolingian Era*, vol. 3, ed. Celia Chazelle and Burton Van Name Edward, *Medieval Church Studies* (Turnhout: Brepols, 2003), 189–214, (pp. 194–95, 198–201).

⁷⁴ Acts of these councils are in MGH Conc. II, 1, pp. 93–105. The primary focus of the ducal councils was the regulation of property transfers; little recognition was accorded to specifically ecclesiastical rights, protections, or immunities. Many of the decrees have frequent and deliberate specification of vernacular terminology for legal concepts. The statutes also lack any annotation from Scripture. Stephan Freund, *Von den Agilolfingern zu den Karolingern: Bayerns Bischöfe zwischen Kirchenorganisation, Reichsintegration und karolingischer Reform (700–847)*, *Schriftenreihe zur bayerische*

assemblies should not, however, be construed as representations of a debilitated Church. Quite a few clerics, including Landfrid, the recipient of Autpertus's *Libellus de conflictu vitiorum atque virtutum*, were not only present at the Council of Dingolfing but also conducted their own business there. Appended to the legislation ratified at the Council of Dingolfing was a pact between bishops and abbots of the region regarding the memorial masses that would be said at the death of one signatory by the others.⁷⁵ Landfrid was one of the signatories, as was Virgil of Salzburg, one of the objects of Boniface's prosecutions. Others were from the dioceses of Freising and Ratisbonne and from smaller centers in the same region. The memorial pact alone is no indication of ecclesial strength or weakness—such pacts exist in any number of circumstances—but taken in concert with the surviving records of the Bavarian councils of the late 8th century, it suggests that, in contrast to the strictly hierarchical ecclesiology envisioned by Boniface, the clergy of southern Germany seem to have been interested in lateral bonds of collegial allegiance.⁷⁶ In Tassilo's domains, bishops and priests seem to have been embedded in the processes of secular government, in alliance with each other, and also in contact with prominent clerics outside Bavaria.⁷⁷ The absence of interest in a penitential program does not seem to indicate any inadequacy in ecclesiastical organisation; rather, it indicates that penance was not prominently featured in the religious agenda in Tassilo's dukedom, just as it had not figured in Boniface's agenda during those same decades.

After Tassilo was consigned to a monastery by Charlemagne in 788, both the secular and ecclesiastical patterns of power in Bavaria changed. Charlemagne completed his annexation of the region during the 790s.

Landesgeschichte, 144 (Munich: C.H. Beck, 2004), 83–143, makes a compelling argument for the development of co-ordinated secular and ecclesiastical authority during Tassilo's reign, especially in the use of *missi* (pp. 99–100), promotion of legislation in the interests of both lay nobles and bishops, and the conduct of external affairs. Such integration, however, does not match the Carolingian recourse to pastoral action as an extension of secular government.

⁷⁵ The terms were 100 special masses for an abbot or bishop, 30 special masses for a priest or monk.

⁷⁶ Excellent discussion of *Totenbund*, the memorial pact, is in Claussen, *Chrodegang*, 55–57.

⁷⁷ On the development and importance of assemblies with both secular and clerical representation, see Wilfried Hartmann, "Laien auf Synoden der Karolingerzeit," *Annuario Historiae Conciliorum* 10 (1978): 249–69; and Wilfried Hartmann, "Zu einigen Problemen der karolingischen Konzilsgeschichte," *Annuario Historiae Conciliorum* 9 (1977): 6–28.

Among the measures he took to obtain control were the installation of his brother-in-law, Gerold, as prefect of Bavaria and also, in 798, of his close advisor Arno of Salzburg as archbishop of Bavaria.⁷⁸ Arno's connections with Charlemagne's court took shape in the previous decade, when Arno was in northern Francia as the abbot of St.-Amand, before becoming bishop of Salzburg in 785. This circumstance put him in contact with important arrivals in Charlemagne's court circle of clerics: Alcuin and Theodulf joined the court in 782; in or around 796 both had left the palace to take up residence in, respectively, Tours and Orléans, joining the cadre of imperial advisors who, after serving Charlemagne at court, were stationed across the Carolingian domains.⁷⁹ The web of episcopal relationships that Charlemagne stretched over his territories correlates with the patterns of penitential education that can be discerned in conciliar *acta* and episcopal directives. With imperial support and the friendship of Alcuin and members of his circle, Arno was well positioned to use the power of his archbishopric to consolidate some of the resources earlier developed in Bavaria for a penitentially oriented jurisprudence and also to convene frequent councils for discussion and dissemination of guiding principles.⁸⁰

The correlation between innovations in pastoral care and the imperial court's sponsorship or direction are especially evident in a sermon

⁷⁸ Hartmann, *Die Synoden*, 141; Freund, *Von den Agilolfingern*, 144–48. On the politics of the region and Arno's activities, see Warren Brown, *Unjust Seizure: Conflict, Interest, and Authority in an Early Medieval Society*, Conjunctions of Religion & Power in the Medieval Past (Ithaca, NY: Cornell University Press, 2001), 102–23. The role of Charlemagne in Arno's appointment is made transparent in a letter Pope Leo sent to Charlemagne: "Your royal Excellence, protected by God, has ordered us...to grant the pallium to Bishop Arno and to install him as archbishop in the province of the Bavarians" (quod vestra a Deo protecta regalis excellentia mandasset nobis per ipsum, quod Arnoni episcopo pallium tribueremus et in provincia Baiouvariorum archiepiscopum constitueremus), cit. Heinz Dopsch, "Salzburg zur Zeit Erzbischof Arns," in *Erzbischof Arn von Salzburg*, ed. Meta Niederkorn-Bruck and Anton Scharer, Veröffentlichungen des Instituts für Österreichische Geschichtsforschung, 40 (Vienna and Munich: Oldenbourg, 2004), 36 n.60; cf. MGH Epp. 5, 3, ed. E. Dümmler, 59–60. On Charlemagne's insistence that Arno be made a metropolitan, see Dopsch, pp. 35–37, and also Maximilian Diesenberger and Herwig Wolfram, "Arn und Alcuin, 790 bis 804: Zwei Freunde und ihre Schriften," also in *Erzbischof Arn von Salzburg*, pp. 81–106.

⁷⁹ The closeness of these men to Charlemagne can be discerned in the generous properties he awarded them: Arno and Theodulf both were abbots of two monasteries each, and Alcuin's property holdings were an embarrassment. Barbero, *Charlemagne*, 185, 216–17.

⁸⁰ On Alcuin's development of penitential ideas, see the important work of Michael S. Driscoll, *Alcuin et la pénitence à l'époque Carolingienne*, Liturgiewissenschaftliche Quellen und Forschungen (Münster: Aschendorff, 1999).

now ascribed to Arno, probably composed between A.D. 806 and 811 for delivery to a Bavarian synod.⁸¹ Written almost certainly to convey the mandate contained in a circular letter sent by Charlemagne that called for fasting periods to be observed by both clergy and laity, the sermon exhorts its audience to engage in collective rituals of penitential fasting as a form of political participation.⁸² Of particular note is the communal perspective: the sermon presents a view of penance that goes well beyond its application as a method of either clerical discipline or ministry to a suffering, contaminated, or guilt-ridden individual. Both the conditions and remedy are expanded because the community is perceived as a polity:

We can recognise clearly, brothers, in the various tribulations which we suffer greatly from day to day, that this was merited by our sins and especially for our fault, who are the learned among the people of God, that we have not served God as perfectly as we promised, or as he has required. There is also the transgression of his people, who do not wish to be obedient to the teachings of God, as is necessary for their eternal salvation and glory, and not even by our admonitions are they worthy of meriting from the Lord the necessities of this world; although we have warned them not infrequently, as is right, insufficiently have we thought to instruct them as is necessary for them, as for us. Clearly, then, we must understand: either if we perform that fasting, which we have undertaken by common decree, with so full a heart and sincere devotion, with such humility and chastity, that it be a worthy supplication to the Lord that the Lord not punish us so with various afflictions, or if the people subject to us should decide to keep our vow and our intention better than we do, or if we were to display to them so holy an example of good activity, as is right, they would not commit such wicked acts and such transgressions as they do, and would not even presume to perpetrate such outrages.⁸³

⁸¹ The text (found in a Munich manuscript, Clm 14422) is described and edited, and the argument for Arno's authorship is made, by Rudolf Pokorny, "Ein unbekannter Synodalsermo Arns von Salzburg," *Deutsches Archiv für Erforschung des Mittelalters* 39 (1983): 379–94. Cf. MGH Conc. II, 1, 214–15, *Notitia Concilii Rispacensis*, and other versions 217–19. For another early 9th-century Bavarian codex with episcopal instructions on confession and penance, penitential sermons, and short tracts on the vices (Munich, Staatsbibliothek, Clm 14410), see Abigail Firey, "Useful Guilt: Canonists and Penance on the Carolingian Frontier," in *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, ed. Martin Brett and Kathleen G. Cushing, Church, Faith and Culture in the Medieval West (Farnham, Surrey and Burlington, VT: Ashgate, 2009), 15–33 (much of which replicates material in this book, by the gracious permission of both publishers).

⁸² Pokorny, "Ein unbekannter Synodalsermo," 383–87.

⁸³ "Manifeste cognoscere possumus, fratres, in istis diversis afflictionibus, quas de die in diem peramplius patimur, nostris hoc promereri peccatis et nostrae hoc esse

The text goes on to develop an exposition of the relation between the obligations of the community with respect to the emperor and with respect to God: fear, love, humility, and reverence are the attitudes to be cultivated by subjects of both the worldly and heavenly kingdom. The fasts, prayers, and alms of the structured rituals are to include, after a procession with the cross and candles, first a prayer for "the condition of the holy Church of God, for the peace and welfare and increase of the Christian people, for the life and safety of the emperor and of his sons and daughters, for the condition and increase of their kingdom, and for the souls of those remembered in prayer."⁸⁴ A subsequent prayer includes the petition that God not only defend those praying from the enemies of His Name but also, by His will and command, subject them to Carolingian domination. The communal and political concepts of the rituals are also reflected in the directive that savings obtained by fasting were to be given to the poor and that only the poor and needy might be invited to dine during the designated fasting periods. Both the free and slaves are to be released from work that might impede their participation; they too are required to fast.⁸⁵

The fully elaborated times, forms, and invocations of these collective rites surpass beyond measure the prayers offered for Tassilo's government, and their construction as penitential observances also distinguishes them from earlier formalities signalling the integration of secular and religious interests. Above all, obedience and contrition, the

maximae culpaе, qui doctores populi dei esse videmur, quod non tam perfecte, ut deo promisimus, in eius servitio permanemus neque ut a deo nobis praeceptum est; quamvis et illius populi sit delictum, qui neque dei praeceptis volunt esse oboedientes, ut eis necessarium est ad aeternam illorum salutem et gloriam, neque etiam monitis nostris ad huius seculi necessitates a domino promerendas; quamquam eos nec tam frequenter ammonemus, ut iustum est, nec tam pleniter eos novimus ammonere, ut nostra vel eorum communis est necessitas. Evidenter denique valemus intellegere: Si vel ea ieiunia, quae communi decreto agere statuimus, in tanto corde ac sincera fecissemus devotione, cum tanta humilitate et castitate, ut dignum est dominum supplicare, non nos tam diversis dominus afflictionibus castigasset, aut si populus nobis subiectus nostram nos professionem nostrumque propositum cerneret melius custodisse, quam facimus, aut si eis tam sancta bone operationis ostenderemus exempla, ut iustum est, nec ipsi nobis tanta fecissent obprobria tantasque derogationes, ut faciunt, nec ipsi etiam tanta flagitia perpetrare praesumerent." Ein unbekannter Synodalsermo," 390.

⁸⁴ "Sit oratio primo pro statu sanctae dei ecclesiae, pro pace et salute atque pro augmento populi christiani, pro vita et incolomitate domni imperatoris et filiorum eius atque filiarum suarum, pro statu et augmento regni eorum, pro nostra omnium eorumque, qui nostris sunt orationibus commendati, aeterna vita et salute..." Pokorny, "Ein unbekannter Synodalsermo," 392.

⁸⁵ Pokorny, "Ein unbekannter Synodalsermo," 392–93.

primary qualities of the penitent, are the author's focus. The text alludes to the fear of God—*timor Dei*—a concept that threads through any number of Carolingian commentaries, and to which Agobard devoted an entire treatise.⁸⁶ The fear and submission are universal: even while chastising and complaining of the errors of their flock, the bishops beat their own breasts and claimed fault: "this was especially for our fault; we, the learned among the people of God, have not served God as perfectly as we promised, nor kept his commandments."⁸⁷ Here, then, was a model in which the penitent adopted a stance of sublime subjugation among the inherently guilty, all vying to acknowledge culpability. Penance thus bound a culprit more tightly to the community: for the moment, the penitent represented, even assumed, the sins of all and participated in redemption. The subjugated attained honour; the guilty found respect. The perpetual, cycling inversion of the dynamics of power in the relationship of the judge and the penitent rendered it a fragile vehicle for social control, but a compelling form of political negotiation.

Penitential education was thus peculiarly well-suited to the political needs of a court and governing cadre engaged in transforming autonomous polities into empire and incorporating communities into new systems of supervision. Bavaria, Saxony, Alemannia, and Brittany seem to have been especially rich in penitential instruction, if the distribution of the extant manuscripts of penitentials and related materials is any indication.⁸⁸ Not only the geography but also the chronology of

⁸⁶ "Deinde ieiunia et orationes simulque elymosinas, quas uno consensu omnes pariter agere decrevimus, cum timore et amore domini, cum humilitate et reverentia, cum castitate simul cordis et corporis sincera voluntate peragere... Secundum eiusdemque constitutionem nostra ieiunia, quandocumque fiant, agere nos oportet ieiunare usque horam nonam cum humilitate et reverentia, cum timore dei..." Pokorny, "Ein unbekannter Synodalsermo," 391–92. Cf. "De spe et timore," Agobardus Lugdunensis, *Opera Omnia*, 427–54.

⁸⁷ Cit. supra, p. 188.

⁸⁸ The geographical patterns of surviving manuscripts of penitentials are described briefly in Raymund Kottje, "Überlieferung und Rezeption der irischen Bußbücher auf dem Kontinent," in *Die Iren und Europa im früheren Mittelalter*, vol. 1, ed. Heinz Löwe (Stuttgart: Klett-Cotta, 1982), 515–17, 519–20: "der Nordosten des vorkarolingischen Frankenreiches, der deutsche Südwesten mit dem Bodenseeraum sowie der Südosten mit Salzburg." Some manuscripts can be traced to Fulda, Lorsch, and Salzburg: one "wohl nicht lange nach dem Tode des Bischofs Virgil geschrieben"; others "aus dem Bodenseegebiet, aus dem Würzburger Umkreis und aus Bayern." The same distribution is noted in Kottje, "Busspraxis und Bussritus," in *Segni e riti nella chiesa altomedievale occidentale*, 11–17 aprile 1985, vol. 1, Settimane di Studio del Centro italiano di Studi

the large proportion of penitentially coloured pastoral instructions, conciliar prescriptions, and episcopal capitularies corresponds to the development of imperial policies for pacification of troubled frontiers. After the initial brutality of Charlemagne's *Capitularium de partibus Saxoniae* of A.D. 782, in which, among other items, violation of fasting regulations was punishable by death, religious coercion in the newly annexed territories was replaced by more considered strategies of spiritual renewal, after the Council "on the shores of the Danube" in A.D. 796, which Arno attended.⁸⁹ Noting that the tithing practices of the conquerors were instilling the perception among the conquered that the military ventures of Charlemagne had as their objective new sources of wealth, Charlemagne's advisor Alcuin proposed that tithing should be suspended and religious education in these regions should be enhanced to clarify the purpose of salvific practices.⁹⁰ The burgeoning penitential explication and formation in the early years of the 9th century corresponds to the refinement of imperial and ecclesiastical efforts to integrate and reconstruct communities that had seen insurgency, often manifested in church-burning, in the wake of Charlemagne's military conquests.⁹¹

In such fragile and volatile environs, it was not easy to set the fulcrum in the delicate balance of power between the ministers of the imperial Church and the laity from communities likely touched by violence. Courts of conscience were, one may suspect, particularly problematic sites for these parties to approach. One of the challenges Arno faced was explaining to confessors how they should encourage voluntary submission to authority and instill a sense of the propriety of universal and common fear. While Arno's sermon might seem simply to relay the command of the emperor (for the fasts are *ex iussione imperatoris*),⁹² other documents associated with Arno show his efforts to convey to his suffragan bishops and priests how they might exercise compassionate

sull'alto medioevo, 33 (Spoleto: Centro italiano di Studi sull'alto medioevo, 1987), 374, 378, 383–83.

⁸⁹ MGH Conc. II, 1, pp. 172–76. For a fascinating analysis of the context for the *Capitulatio de partibus Saxoniae*, see Yitzhak Hen, "Charlemagne's Jihad," *Viator* 37 (2006): 36–51.

⁹⁰ Barbero, *Charlemagne*, 243, on Alcuin's protests. Cf. *Conventus episcoporum ad ripas Danubii*, in MGH Conc. II, 1, pp. 174–75.

⁹¹ On insurgency and church-burning, see Barbero, *Charlemagne*, 243.

⁹² MGH Conc. II, 1, pp. 206, 207, cit. Pokorny, "Ein unbekannter Synodalsermo," 386.

pastoral care for sinners and also use judicious and appropriate procedures to induce the fear that edifies.⁹³

One such text is the *Instructio pastoralis* attributed to Arno, which is found in an early 9th-century manuscript compiled to serve as a manual for the training of priests.⁹⁴ The *Instructio pastoralis* seems to be a circular sent by Arno to his suffragan bishops so that they might in turn inform the priests in their dioceses of synodal decisions.⁹⁵ Penance for parishioners is described in some detail, and the penitential process is imagined as one of potentially increasing pressure that is not in itself coercive but is intended to bring a perhaps recalcitrant culprit to recognition of his dire condition. The description begins with a case of simple and kind penitential ministry: a lapsed parishioner is to be guided back to the Church through a confession offered to God in the presence of the priest, who, after the penitent performs a penance and ceases bad conduct, receives him back into the fold.⁹⁶ The *Instructio* then goes on to hypothesise about a case of resistance, that of a man so swollen with pride that he refuses to heed his priest. The first additional measure to be applied is based on the premise that even if the man does not fear the consequences of his sin as presented by his priest, he might be averse to the discomfort of facing his community: the *Instructio* explains that the man is to be corrected in the presence of witnesses, if necessary, in the presence of the whole community, so that he may blush and be afraid. The second measure proposes that he might fear institutional authority: if he be so contumacious that communal shaming fails, he is to be drawn to the attention of the bishop, who may strive to defeat him with persuasion and to summon him to a synod. If institutional authority fails to obtain the man's self-correction, the bishop is permitted to monger the fear of divine retribution: he may set forth to the man the eternal punishments and divine judgement awaiting, since neither persuasion nor earthly fear elicited reform.⁹⁷ The final measure

⁹³ Dubreucq, "Autour du *De virtutibus et vitiis* d'Alcuin," 276, suggests that Alcuin's comment that the sin of pride is evident in contumacity, "when men disdain to obey their superiors" may have been written with reference to late 8th-century rebellions such as Tassilo's, and he traces the sentiment in an imperial capitulary of 810.

⁹⁴ Description of the manuscript and a register of its contents are in Étaix, "Un manuel de pastorale," 105–09.

⁹⁵ Étaix, "Un manuel de pastorale," 115.

⁹⁶ The text of the *Instructio pastoralis* is edited in Étaix, "Un manuel de pastorale," 116–28.

⁹⁷ Cf. Conc. ad Ripas Danubii, the council Arno attended in 796, where it is explained that presentations of the terrors of damnation should always be balanced by discussions

permitted is excommunication, so that others, their fear awakened, will not neglect the preservation of their souls.⁹⁸

The pastoral understanding that fear motivates many a penitent, but that it must be shaped as wholesome rather than craven fear, is detailed elsewhere in the manuscript containing the *Instructio pastoralis*. Compiled to supply the priest with the materials required for the proper exercise of his office, the manuscript has a collection of sermons, primarily by Gregory the Great. The coherence of the manuscript's design permits a wider view of the penitential instruction transmitted to its intended reader than is found in the *Instructio pastoralis* alone. The theme of the fear of God that informs the penitent appears in at least one of the sermons of the manuscript (a sermon seemingly popular in Bavaria) where it is linked to penitential confession, by which one may pass into house of God.⁹⁹ Using an allegorical description of the Church as a house of seven parts, the preacher explains that the threshold (*limen*) is the contempt for one's own desires that is part of the experience of confession, as is meant, he suggests, by the biblical verse, "He that hideth his sins, shall not prosper: but he that shall confess shall obtain mercy" (Prov. 28:13). The lintel overhead is the fear of the Lord, which looms over all entering the church of God, as the verse "the fear of the Lord is the beginning of wisdom" demonstrates.¹⁰⁰ The depth and detail of such exegetical elaboration—and, indeed, the breadth of material contained in the manuscript as a whole—reveal an environment where complex and varied intellectual resources could

of Paradise and the promise of salvation: MGH Conc. II, 1, p. 175. The sequence of correction described in the *Instructio pastoralis* derives from the directive for the correction of a neighbour in Matt. 18:15–17 but then extends it to episcopal action.

⁹⁸ Étaix, "Un manuel de pastorale," 118–19. Excommunication is treated further in another chapter of the *Pastoralis*: cf. Étaix, "Un manuel de pastorale," 122.

⁹⁹ The sermon is not drawn from the known patristic corpus but is found in other manuscripts from Carolingian Bavaria: MS A I/6 of the Bibliothek der Philosophisch-Theologischen Hochschule der Diözese Linz (this section: saec. IXin, Bavaria) and Oxford, Bodleian Library, Laud. Misc. 129 (saec. IX1/2, Main region). Étaix, "Un manuel de pastorale," 126, 129.

¹⁰⁰ "Limen vero contemptio voluntatum in confessionibus, ut est illud: *Qui abscondit scelera non dirigetur, qui autem confessus fuerit misericordiam consequitur*. Superliminare timor Domini est qui supereminet omnem intrantem in ecclesiam Dei, ut dicitur: *Initium sapientiae timor Domini*." Étaix, "Un manuel de pastorale," 127. One of the manuscripts written at Salzburg during Arno's episcopate contains a text beginning "Timor dei expellit omnem nequitiam," perhaps a version of a sermon once posited as possibly by Augustine (PL 39), "De humilitate et timor dei," which contains the line "Timor dei expellit peccata" (sermo 297).

be brought to bear upon imperial directives. Ideas about the utility of confession and penance were not simply imported by imperial mandate: the full construction, exploration, and even countervailing perspectives of a penitential curriculum took place in the conversations, debates, and exchanges of texts at the local and regional level.

The acquisition of the materials that were synthesised into the rich penitential discourse of Bavaria began before Arno's tenure as archbishop (a.798–821), but the expansion of that discourse in the juridical sphere seems to have been particularly well supported by Arno's additions to the Salzburg library.¹⁰¹ Memorialised as having produced more than 150 manuscripts, Arno was indisputably a bibliophile.¹⁰² The quantity and range of penitentials, canon law books, treatises on penance and legal problems, and secular law he had copied all attest to his interest in penitential and juridical resources. A number of the manuscripts also include writings by Alcuin and communications from the court regarding conciliar activity, both of which further affirm the importance of those influences in shaping Arno's legal and penitential studies. Other contents of the manuscripts, however, indicate the ways in which the local and regional context remained important for the study of ecclesiastical law: the *Lex Baiwariorum* and acts of Tassilo's synods are also copied into them. Perhaps most noteworthy is the juxtaposition of materials now treated separately by scholars as "penitential" and "legal"; it is clear from the manuscripts that Arno did not distinguish these categories, and that the study of matters penitential was an integral part of a bishop's legal training.¹⁰³ The manuscript context of the

¹⁰¹ For information on Arno's expansion of the Salzburg collection, see K. Forstner, *Die karolingischen Handschriften und Fragmente in den Salzburger Bibliotheken (Ende des 8. Jh. bis Ende des 9 Jh.)*, Mitteilungen der Gesellschaft für Salzburger Landeskunde, 3. Ergänzungsband (Salzburg, 1962) and K. Foltz, *Geschichte der Salzburger Bibliotheken* (Vienna, 1877).

¹⁰² Roger E. Reynolds, "Canon Law Collections in Early Ninth-Century Salzburg," in *Proceedings of the Fifth International Congress of Medieval Canon Law (Salamanca, 21–25 September 1976)* (Vatican City: Biblioteca Apostolica Vaticana, 1980), 16–18.

¹⁰³ Two manuscripts illustrate these points. Munich, Staatsbibliothek, lat. (Clm) 6243, from the "early Arnonian period," contains the Penitential of Cummean (Wasserschleben, *Die Bußordnungen*, 460 sq.) juxtaposed to the canon law compilation known as "the First Collection of Freising" (see Lotte Kéry, *Canonical Collections of the Early Middle Ages [Ca. 400–1140]: A Bibliographical Guide to the Manuscripts and Literature*, History of Medieval Canon Law [Washington, D.C.: Catholic University of America Press, 1999], 2–3), a royal capitulary, and the text of Tassilo's Synod of Ascheim and the episcopal memorial pact signed there. Wolfenbüttel, Herzogl.-Aug.

penitentials is fully in keeping with the textual evidence, noted above in Chapter Two, that indicates that many, if not most, of these texts are to be read as learned law: they seem to have been material for the study of problems, posed as hypothetical cases, that could serve to test a priest's understanding of the principles to be applied in assessing the conditions and needs of penitents.

These larger dynamics—imperial intervention, local collection and discussion of texts, and integration of penitential theology into legal studies—were manifested in the five councils of 813, which have long been considered by scholars a watershed in the co-operation, even co-option, of the Carolingian clergy in the growth of imperial government.¹⁰⁴ The records of these five councils are especially useful in that they indicate something of the spread to other areas of the empire of the intellectual constructs that supported the penitential ideology already evident in the north-eastern regions. Arno participated in one of these councils, the Council of Mainz, and it would seem that the conditions of his episcopate were little changed from those of the previous decade, in that the council's emphasis was on obedience to imperial authority and proposals to bring order to a profoundly disrupted community.

Bibliothek, 579 (Helmst. 532) contains notes on sins ("de peccatis"), a tract on the virtues beginning "the fear of God expells all evil" (*Timor dei expellit omnem nequitiam*), letters from Louis the Pious to Arno transmitted with the decrees of the Council of Aachen in 816, a canon from the Council of Orléans on ecclesiastical criminal cases, a description of the ritual for holding a synod, and the *Lex Baiuvariorum* with fragmentary additions to that text. Cf. Reynolds, "Canon Law Collections," 19–20, 27. My information regarding the contents of these manuscripts comes from *Catalogus codicum latinorum bibliothecae regiae Monacensis* (Wiesbaden: Harrassowitz: 1873, repr. 1968), tom. I, pars III, p. 78; and *Kataloge der Herzog-August-Bibliothek Wolfenbüttel, Die Helmstedter Handschriften*, vol. 2 (Frankfurt am Main: Vittorio Klostermann, 1965), 20–22. Vide supra, n. 80, on Munich, Staatsbibliothek, Clm. 14410.

¹⁰⁴ It should be noted that the actual legislative force of this ambitious program may have been slight, because it appears that the councils of 813 may have convened as purely consultative bodies, whose acts required imperial ratification. Indeed, the Council of Chalon recognised both the boldness of its extensive vision and its purely propositional nature: the opening paragraph of the council's record states explicitly that the canons are to be presented to the emperor and referred to his judgement for confirmation. MGH Conc. II, 1, p. 274. Charlemagne's Capitulary of 813 reduced the conciliar deliberations on confession and penance to fairly general and banal statements, as did the accompanying "Concordia episcoporum." MGH Conc. II, 1, pp. 294–301. At the same time, however, episcopal capitularies drafted and circulated after 813 seem to have been informed by the discussions encapsulated in the canons of Chalon, and some of the canons were enshrined in the jurisprudence of the Church owing to their citation in the 12th century in Gratian's *Decretum*, the centerpiece of the corpus of canon law.

The councils also reveal, however, the points of difference, even contention, that arose as pressures on jurisdictional authority became more acute, in part due to the accretion of penitential considerations upon legal expectations.

The five regional councils of 813 were all convened at the friendly command (*iussu fraternitatis*, as the Council of Arles put it) of Charlemagne, a command that seems to have included some indication of topics to be considered, for the surviving conciliar acts suggest a common, imposed agenda behind their differing reports.¹⁰⁵ The councils were presided over by the bishops whose cities hosted the conventions, but it is probably significant that it was the Council of Mainz, attended by the clergy of the eastern frontier, which the emperor's arch-chaplain, Hildibald, attended. While Hildibald's benefice was the metropolitanate of Cologne, and thus the Mainz gathering would have been the logical one for him to attend for geographical reasons, the proceedings of the council pointedly identify him first in the notation of eminent clergy in attendance, describing him as "archbishop of the sacred palace."¹⁰⁶ The preamble of the council also lavishes more rhetorical recognition on Charlemagne than the texts produced at Arles, Tours, Chalon-sur-Saône, and Rheims, addressing itself to "the most glorious and Christian emperor Carolus Augustus, governor of the true faith and defender of the holy church of God, honor and blessing with victory without end everlasting, along with life and health for his race (*una cum prole sua*) and the faithful." The heightened political and sacred significance of the council was also expressed in the three days of fasting and supplication celebrated in preparation for the deliberations. In the opening ceremonies, there were thanks that God had granted such a pious and devoted governor to the service of His Church, who fed the sheep of Christ and instructed the Christian populace with divine discipline, in order to snatch souls from the maw of the dragon and restore them to the bosom of the Church.

As in the earlier documents from Bavaria, imperial participation in religious ritual was linked to a topos of community revival through instantiation of the values of humility and fear of God. After constituents were placed according to their juridical estates (bishops, assisted by notaries; abbots and selected monks; counts and nobles who

¹⁰⁵ Hartmann, *Die Synoden*, 132.

¹⁰⁶ MGH Conc. II, 1, p. 259; Hartmann, *Die Synoden*, 130.

administered secular justice), the council pledged to extend respect to all, according to the words of the first shepherd of the Church, Peter, when he said, "Honour all men. Love brotherhood. Fear God. Honour the king. Servants, be subject to your masters with all fear, not only to the good and gentle, but also to the overbearing. For this is indeed a grace in our Lord Jesus Christ" (1 Pet. 2:17–19). The injunction to fear, obedience, and submission was elaborated with recitation of the following two biblical verses: "He that heareth you, heareth me; and he that despiseth you, despiseth me; and he that despiseth me, despiseth him that sent me" (Luc. 10:16), a citation that would stand frequently in the Pseudo-Isidorian decretals of the 9th century as a rationale for ecclesiastical authority; and "Obey your prelates, and be subject to them. For they keep watch as those who will have to render an account of your souls" (Heb. 13:17).¹⁰⁷

Matching the symbolic arrangement of the parties at the council in their juridical estates, the proceedings of the Council of Mainz concerned the political and social roles of imagined groups, rather than the legislative resolutions for individual cases, which were more standard in the conciliar acts of earlier centuries. The departure from precise prohibitions to general prescriptions for virtuous living according to status, in order to secure peace and concord, marks the council's decisions as primarily political rather than legal. The specifics which are addressed in the latter portion of the record likely represent particular local concerns: the attention devoted to provisions for the poor, widows, and orphans—particularly institutional measures to protect them from oppression—may reflect a continuing state of disruption and damage from the rebellions and military activity in the eastern domains of the empire.¹⁰⁸ The perception of unsecured communities in need of pastoral care is also suggested by the chapters on false prophets and the mandate to observe the collective fasting periods sought by Charlemagne.¹⁰⁹ What is striking is the way in which potential challenges to institutional authority were addressed with penitential rites and language. The rubric for the chapter protesting against unorthodox teaching assumed the language of penitential discourse: "Concerning the discernment of counterfeit virtues and authentic vices."¹¹⁰

¹⁰⁷ MGH Conc. II, 1, p. 260; Firey, "Lawyers," 195, 197.

¹⁰⁸ MGH Conc. II, 1, p. 262.

¹⁰⁹ MGH Conc. II, 1, pp. 266, 268–69.

¹¹⁰ "De fictis virtutibus et veris vitiis discernendis." MGH Conc. II, 1, p. 266.

The details of penitential administration, however, were not developed at the Council of Mainz. Comprising clergy closest to the recently subdued portions of the middle Rhineland and providing overt imperial support for their pastoral plans, the council's interest in the larger issues of establishing peace, stability, and order superceded any attention to refining penitential protocols. Although the combined evidence of texts, manuscripts, and rhetoric show that the northeastern sector of Charlemagne's empire was the heartland of the penitential movement, the passage from ideology to legal prescription was shaped in councils held elsewhere. In the middle Rhineland, clerics developed a didactic program that used the seven deadly vices for analysis of both the personal and ethical dimensions of social intercourse, and they complemented that teaching with insistence on the prophylactic effects of fear and obedience. The pairing of these two components of a penitential outlook ensured that individual inspiration would not turn the court of conscience into a site of unchoreographed theatre or of usurpation of pastoral, judicial, or political authority. In areas of the empire where the exigencies of military occupation and social duress did not press so heavily, however, there seems to have been more debate over definitions of sin, crime, guilt, and expiation. The Council of Chalon, in particular, which convened the clergy of southern Gaul who were, perhaps, more accustomed to working within the framework of late Roman provincial law, sought to resolve the questions of who would have authority to direct confessions and penance, what written law could be cited in decisions, and how the social and political structures of power would accommodate the innovations in penitential protocols.

*"They do not cure, but bathe and stroke":
Debates over penitential authority*

Despite the distinction just noted between the proceedings at Mainz and those at Chalon, the two councils were part of the same imperial project. The influence of the court on the Council of Chalon is revealed not in documented rituals, sermons, or endorsements of particular imperial mandates but, rather, in the replication of the learned discourse shared by the clergy connected to the court. The text of the council's record is characterised by an exceptionally high incidence of biblical references offered in support of legal opinion, a quality which has led some scholars to conclude that the proceedings of the council were

probably written or at least revised by Theodulf of Orléans, rivalled only by Alcuin as the court's counsel in matters pertaining to imperial guardianship of the faith and known for his capacity to build arguments with the force of law from Scripture.¹¹¹ If Theodulf was, indeed, a redactor of the canons, it would be further illumination of his role as a court-affiliated bishop stationed near the frontiers of the empire and implementing the penitential agenda developed in the last decade of the 8th century and first decades of the 9th. Theodulf's bishopric at Orléans placed him near western Neustria, a zone that was still not fully under Carolingian control, and close to Le Mans, where in 790 Charlemagne placed his eldest son, also named Charles, to increase imperial presence.¹¹² Western Neustria was a staging-ground for Carolingian military campaigns against the Bretons; in 799 the commander of the Breton march was Wido, the royal official entrusted also with judicial authority and to whom Alcuin's *Liber de virtutibus et vitiis* was dedicated.¹¹³ Although the resistance to the Carolingians differed in important ways from that on the eastern frontiers, it is nevertheless clear that imperial authority could be challenged readily, and it is suggestive that some of the same phenomena of penitentialism and activism on the part of clergy affiliated with the court are evident. Especially intriguing is the recent suggestion that Theodulf played a leading role in shaping the unusually aggressive policies for imperial subjugation expressed in Charlemagne's capitulary *de partibus Saxoniae*.¹¹⁴

While the politics, military activity, and insurgency in the western regions of the empire were less volatile than in the eastern, there was nevertheless a corresponding interest in the study and promotion of

¹¹¹ Hartmann, *Die Synoden*, 129, 132, 133.

¹¹² Julia M.H. Smith, *Province and Empire: Brittany and the Carolingians*, Cambridge Studies in Medieval Life and Thought (Cambridge and New York: Cambridge University Press, 1992), 43–51. Smith describes the area “west of a line from Rouen to Tours” and “between the Seine and the Loire” as “part of the nine-tenths of the Carolingian empire which rulers never visited” (pp. 48–49).

¹¹³ Smith, *Province and Empire*, 52–53, who notes that Wido was sent as a royal *missus* to Tours in 802.

¹¹⁴ Smith, *Province and Empire*, 69, is careful to note, speaking of Brittany, that “in contrast with Aquitaine, Neustria, and Burgundy, no Austrasian Franks were appointed to rule Breton monasteries, no Breton church lands were diverted to support Frankish officials,” but also she states that “The marcher area itself was one where Carolingian authority was fragile because only tardily established: a history of freedom from royal direct intervention shaped the politics of this region until the middle of the ninth century” (p. 59). The proposal that Theodulf was instrumental in shaping the *Capitulatio de partibus Saxoniae* is in Hen, “Charlemagne's Jihad,” 44–51.

penitentially oriented law. The library at Orléans, like that of Salzburg, was a repository for penitentials, canon law, and biblical exegesis. Although the specific works collected in Orléans are not precisely identical to those known to have been in Salzburg, the fields of study and their application are similar, and the common academic milieu—marked by interest in penitential education, scriptural hermeneutic, legal training, and the Gregorian/Pomerian ideology of combined clerical asceticism and activism—is displayed in the acts of the Council of Chalon. The canons of the council refer to Julianus Pomerius' *De vita contemplativa* and Gregory the Great's writings and also have an explicit prescription for the use of Gregory's *Liber pastoralis* in clerical training and the system of the eight deadly vices in the interrogation of penitents.¹¹⁵ The stipulation that the eight principal vices should define the form of confession is also found in the episcopal capitulary Theodulf sent to his suffragans, as well as in episcopal capitularies composed subsequently.¹¹⁶

The Council of Chalon proposed a rigorous system of confession and penance that moved devotional practices toward sacerdotal supervision. Ten lengthy canons were dedicated wholly to the protocols of penitential confessions, and together they read as a nearly complete

¹¹⁵ "Canones quoque intellegant et librum beati Gregorii papae de regula pastorali et secundum formam ibidem constitutam et vivant et praedicant." Conc. Cabill. cap. 1 (MGH Conc. II, 1, p. 274). Julianus Pomerius is cited in cap. 6 (MGH Conc. II, 1, p. 275). "Instruendus est itaque peccatorum suorum confessor, ut de octo principalibus vitiis, sine quibus in hac vita difficile vivitur, confessionem faciat, quia aut cogitatione aut, quod est gravius, opere eorum instinctu peccavit. Odium etenim, invidia, superbia vel caeterae huiuscemodi animae pestes tanto periculosius laedunt, quanto subtilius serpunt." Ibid., cap. 32.

¹¹⁶ Cap. 31. "Confessions are to be given with regard to all sins, whether they were committed in deed or thought. There are eight principal vices, outside which scarcely anything can be found... [Iteration of vices] When, therefore, someone comes to confession, it ought to be investigated diligently in what way or on what occasion he committed the sin which he confesses to have done. And according to the manner of the deed, a penance should be adjudged for him. Let him be persuaded that he should confess to perverse thoughts. It also should be enjoined upon him to make his confession with regard to the eight principal vices. And the priest should tell him each of the named vices and receive his confession about them." MGH, *Capitula Episcoporum*, ed. Peter Brommer (Hanover: Hahnsche Buchhandlung, 1984), 128–29. Theodulf's capitulary was popular outside the boundaries of his province and is extant in some 30 manuscripts. See Brommer, "Die bischöfliche Gesetzgebung Theodulfs von Orléans," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 91 (Kan. Abt. 60) (1974): 1–120; and Brommer, "Die Rezeption der bischöflichen Kapitularien Theodulfs von Orléans," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 92 (Kan. Abt. 61) (1975): 113–60.

treatise. The scheme was coherent and consonant with the concepts of asceticism beyond the monastery walls, of suffering for the purgation of sins, of biblical warrant for the proposed regulations, and of particular attention to the internal motions of the soul, as manifested in the eight principal vices. There are indications that this program was a departure from the penitential devotions already observed, possibly with some enthusiasm, by the laity and lower clergy, and that the council's statements represented an effort on the part of the elite clergy, whose power derived in part from their association with the imperial court, to redefine and regain control over spiritual activities that had evolved without much institutional review.¹¹⁷

The introduction of the pastoral device of the principal vices into the acts of a church council was a matter of greater consequence than was perhaps intended. In effect, the council proposed a new sphere of institutional jurisdiction that would have authority over matters hitherto never adjudicated. This added stratum of judicial process would operate at the lower levels of the clerical hierarchy, and the accusers would be the guilty. It is not clear whether the bishops at Chalon fully appreciated the implications of their propositions. What would be the protocols for judgement? How would the process work in instances where there were differences in status between the confessor and the penitent, given that lower clergy would be the arbiters? What textual authorities governed the process, and to what extent? And how would this additional sphere of judgement be situated among the other jurisdictions of bishops, monastic superiors, secular lords, and the ministers of royal justice?

That the Council was operating in an environment in which the forms and meaning of confession were still varied and fairly unrestricted is clear from what seem to be the vestiges of diplomatic negotiation over whether confession could be to God alone or need be to a priest. The proposed canon resolved the dilemma by affirming, on the one hand, that the fruits of confession are God's to distribute and asserting, on the other hand, the utility of confession to a priest, depicted as the physician through whom God effects healing. Citing the crucial phrase from James (5:16) enjoining confession to one another, and ignoring the possibility that it might refer to confession to a layperson,

¹¹⁷ See the discussion in Chapter Three of the penitential dimension of Adalbert's popular ministry.

the canon transformed it into an argument for confession to a priest. In the absence of language of absolution in the Carolingian period, the explanation of the efficacy of such confession was expressed in terms of purgation: confession made to God purges sins; confession made to a priest teaches how those sins may be purged.¹¹⁸ The canon thus made a connection between confession and penance and began to define the redemptive process to be enacted in institutional rites performed by all the faithful, not only those guilty of grave crimes.

While not explicitly stating that laity were not qualified to hear confessions, the council's description of the protocols for a proper confession implied that sacerdotal training was required and that the confessor had special, judicial authority. Rather than being imagined simply as a compassionate and prayerful auditor, the confessor is to be an interrogator, and a shrewd one, so that sins of both the body and mind may be searched out and confessed.¹¹⁹ The council stated that confession should be made regarding the eight principal vices, as these constituted grave danger to the soul.¹²⁰ The judicial role bestowed on the confessor in the process was also conveyed in the instruction that he should, like a secular judge, not take into account the status of the person making the confession. The comparison appears to be deliberate: there are parallel canons specifying that counts and judges should never consider either payment or person in judgement, a prohibition supported with citation of Deuteronomy 16:19, "Thou shalt not accept person nor gifts: for gifts blind the eyes of the wise, and change the words of the just." The canon describing the priest's judgement of penance reads: "There is to be no acceptance of person before God, and because this is to be observed in all judgements, it is especially to be observed in the judgement of penance..."¹²¹

The juridical precept that justice demands impartiality, however, was at odds with the traditions of medicinal ministry to penitents, whereby it was precisely individual conditions and needs that a good physician would observe and take into account.¹²² To reconcile the positions, the

¹¹⁸ MGH Conc. II, 1, p. 280.

¹¹⁹ MGH Conc. II, 1, p. 279.

¹²⁰ Ibid.

¹²¹ Capp. 21, 34, MGH Conc. II, 1, pp. 278, 280. The verse from Deuteronomy was used by Alcuin in the chapter on judges (cap. xx) in his *De virtutibus et vitiis* (PL 101, col. 628).

¹²² See, e.g., texts such as those in the penitential ascribed to Bede: "these things about the quality of men we ought to factor into how to judge or assign penance, whether

canon of Chalon argued that just as judges need to resist the inclination to please a litigant, so must good physicians sometimes resist the desires of a patient: "If, therefore, physicians who try to apply medicine to bodies never spare cautery or knife or other severities to those whom they desire to cure out of respect of anyone's person, so much more is [this principle] to be observed by those who are physicians not of bodies but of souls."¹²³

The judicial liberty of the confessor, however, was a matter of some complexity. In the canons of Chalon, the judgement of the priest was dependent upon textual authority for his decision; there was little provision for his personal wisdom or experience. The canon explicating the need for impartiality in judgement made clear that impartiality resides in adherence to written standards for adjudication: "No priest should ever, either through favour or hatred of any person, judge otherwise than as he finds in the sacred canons or what seems right to him according to the authority of sacred writings and ecclesiastical custom."¹²⁴ Priests were thus required to know the canons, and to understand how they might pertain to the vices they would judge.¹²⁵ In this respect, too, the council offered a somewhat different vision of the confessor than was found in a number of contemporary arguments that strove to protect the judgement of the priest as the appropriate means for dispensing justice. This debate over the relative authority of the presiding confessor and of prescriptive texts continued for several decades. Councils held in 816, 829, and 847 reiterated the position that texts, rather than the judgements of individual priests or bishops, were to be the controlling authorities in assigning penitential sentences. Yet a popular

he be a rich or poor man, a free man or a slave, a boy or a youth, if he be less wise or expert, if he be a cleric or a monk, if he be in orders or without orders." Cf. the Preface of the penitential ascribed to Egbert: "Not all therefore are to be weighed with one measure although they be bound in the same vice, but there should be discretion for each one of them, that is, between the rich and poor man, the free man, the slave, the child, the boy, the youth, the elderly, ... the weak, the sick, the well ... etc." Wasserschleben, *Die Bußordnungen*, 229, 231, 232.

¹²³ John Thomas McNeill and Helena M. Gamer, *Medieval Handbooks of Penance* (New York: Columbia University Press, 1938), 401. MGH Conc. II, 1, p. 278.

¹²⁴ Cap. 34: "...multo magis in hoc paenitentiae iudicio praecaveri debet, ut nullus sacerdotum umquam, aut gratia aut odio alicuius personae, secus iudicet, quam quod in canonibus sacris invenerit aut quod illi secundum sanctorum scripturarum auctoritatem et ecclesiasticam [*sic*] consuetudinem rectius visum fuerit." MGH Conc. II, 1, p. 280.

¹²⁵ Cap. 37. MGH Conc. II, 1, p. 281.

and widely circulated juridical treatise argued the opposing position.¹²⁶ Drawing upon a wealth of late antique conciliar precedent the author asserted that

The measure of time in performing penance, moreover, the Canons do not fix sufficiently for each specific crime reviewed, but they determined that it should be left largely to the judgement of the priest, because for God the measure of time matters not so much as that of sorrow, and not so much the abstinence from food, but rather the mortification of vices. On account of this, the times of penance they advise are to be shortened by the faith and habit of the penitents, and prolonged by [their] negligence. Nevertheless there are measures of penance imposed for certain faults, according to which the [measures for] other faults are to be calculated, since it is easy to estimate by these customs the punishment and censure of the Canons.¹²⁷

In this opinion, as the jurist weighed the purely advisory nature of the texts against the essential and yet elusive nature of contrition and mortification, he appealed to a key principle also embraced by the advocates of universal and rigorous penitential discipline: “For God does not despise a contrite and humbled heart” (Ps. 50:19). All parties in the debates over penitential administration held that it was no mechanical or artificial performance of an ascetic regime for a set period of time that secured purgation of sin, but true contrition and genuine suffering, the pain of which was most clearly realised in mortification of the

¹²⁶ The treatise mentioned here often served as the preface to a standard legal compilation, the *Collectio Dacheriana*, and also as the preface to the penitential of Halitgar, as well having independent transmission. It may be found in Luc d’ Achery, “*Collectio Dacheriana*,” in *Spicilegium, sive Collectio veterum aliquot scriptorum qui in Galliae bibliothecis delituerant* (Paris: Apud Montalant, 1723), vol. 1, 509–12. Cf. Raymund Kottje, *Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus: Ihre Überlieferung und ihre Quellen* (Berlin and New York: W. de Gruyter, 1980), 181–82, et passim.

¹²⁷ “*Mensuram autem temporis in agenda paenitentia, idcirco non satis attente praefigunt Canones pro uno quoque crimine, sed magis in arbitrio Antistitis reliquendum statuunt, quia apud Deum non tam valet mensura temporis quam doloris, nec abstinencia tantum ciborum, sed mortificatio potius vitiorum. Propter quod tempora paenitentiae fide et conversatione paenitentum abbrevianda praecipiant, et negligentia protelanda. Exstant tamen pro quibusdam culpis modi paenitentiae impositi, iuxta quos caeterae perpendendae sunt culpa, cum sit facile per eosdem modos vindictam et censuram Canonum aestimare.*” The first portion of the cited text is Pseudo-Alcuin, *De divinis officiis*, PL 101, col. 1199. Cp. Isaac of Langres, *Capitularia*, I.29 (PL I.30): “*Poenitentibus secundum differentiam peccatorum episcopi arbitrio poenitentiae tempora decernantur...*” Cp. Theodulph of Orléans, *Statuta II*, cap. III, in Brommer, *Capitula Episcoporum*, 155–57. The continuation of the Dacheriana text, from “*Propter quod*” on, is original or from an unidentified source.

flesh. This was clearly articulated in the canons of Chalon: "And not indeed is penance to be weighed by the duration of time, but by the ardor of the mind and the mortification of the body." From this premise derived other canons in the council's acts detailing the flawed beliefs of those who thought that by avoiding the consumption of specified foods for a given period they might obtain remission of sin, or those who thought that by giving alms generously they might obtain remission of sin, or those who thought that by going on pilgrimage (apparently an especially sore point, to judge from the length and passion of the canon) they might obtain remission of sin, or those who were so mentally unhinged that they thought a vision of the holy places indicated they had obtained grace. Repeatedly the council maintained that it was mortification of the flesh—the suffering, as it were, of the thief on the cross—that purged sin.¹²⁸

It was this rigour that could not be compromised, in the council's view, that required strict adherence to textual authorities. The use of unauthorised protocols would likely foster leniency, because they would have been devised to please men, rather than God, and would endanger the salvation of sinning souls. This appears to be the issue addressed in the 38th canon of Chalon that includes the phrase most frequently cited by modern scholars in their accounts of Carolingian penance: "The measure of penance should be determined either through the decisions of ancient canons or through the authority of sacred Scripture or through ecclesiastical custom, as stated above, since those little books which they call penitentials are wholly repudiated and rejected, of which sure were the errors, unsure the authors, of whom it can rightly be said: they put to death souls which should not die and made souls live which should not live, those who impose light and novel measures of penance for grave sins *sew cushions under every elbow and make pillows for the heads of persons of every age to catch souls*" (Ezech. 13:18).¹²⁹

It has been an unfortunate habit to pluck the phrase "those little books which they call penitentials are wholly repudiated and rejected, of which sure were the errors, unsure the authors" out of context and to situate it as a key element in the narrative about the insular origins of private penance.¹³⁰ Believing that the penitentials mentioned by the

¹²⁸ Vide supra, pp. 104 ff.

¹²⁹ Conc. Cabillonense (a.813), MGH Conc. II, 1, cap. 38, p. 281.

¹³⁰ "Repudiatis ac penitus eliminatis libellis, quos paenitentiales vocant, quorum sunt certi errores, incerti auctores." MGH Conc. II, 1, p. 281.

canon must be insular texts used by confessors, and that the intent of the canon was to reject such foreign practices, scholars neglected to consider that the clause does not seem to refer to all penitentials, insular or otherwise, but to unauthorised texts “which they call” penitentials. The intended direction of the canon is clarified, more or less, in the explanation from Scripture certifying that rigour and rejection of physical comfort please God: the image of the lascivious production of cushions decried by Ezechiel demonstrated the point.¹³¹ In the imposition of light and newly devised penances, confessors indulged the self-love that impedes correction of others for fear that correction might lessen the penitents’ affection for the correctors. The meaning of the verse was drawn from Gregory’s *Pastoral Care* and had been adopted by Alcuin; the close relationship between the canons, the Gregorian program, and the biblical studies of court clergy is further confirmed by the use of this unusual verse.¹³² The peculiarity of the

¹³¹ Cf. Gregorius Magnus, [*Regula Pastoralis*] *Règle Pastorale*, ed. Bruno Judic and Floribert Rommel, trans. Charles Morel, *Sources Chrétiennes*, 381–82 (Paris: Cerf, 1992), vol. 1, p. 232 (II.8): “puluillos quippe sub omni cubito manus ponere est cadentes a sua rectitudine animas, atque in huius mundi se delectatione reclinantes, blanda adulatione refovere. Quasi enim puluillo cubitum uel ceruicalibus caput iacentis excipitur, cum correptionis duritia peccanti subtrahitur, eique mollities fauoris adhibetur, ut in errore molliter iaceat, quem nulla asperitas contradictionis pulsatur. Sed haec rectores, qui semetipsos diligunt, his procul dubio exhibent, a quibus se noceri posse in studio gloriae temporalis timent. Nam quos nil contra se ualere conspiciunt, hos nimirum asperitate rigidae semper iniectionis premunt, nunquam clementer admonent, sed pastoralis mansuetudinis obliti, jure dominationis terrent. Quos recte per prophetam diuina uox increpat, dicens: *Vos autem cum austeritate imperabatis eis et cum potentia* (Ezech. 34, 4). Plus enim se suo auctore diligentes, iactanter erga subiectos se erigunt, nec quid agere debeant, sed quid ualeant attendunt; nil de subsequenti iudicio metuunt, improbe de temporalis potestate gloriantur; libet ut licenter et illicita faciant, subditorum nemo contradicat.”

¹³² Alcuin, “Epistola 17,” ed. Ernst Dümmler, MGH, Epp., IV (Karolini Aevi II) (Berlin: Weidmannos, 1895), 45: “Ad Aedilhardum (Athelardum) Archiepiscopum Doroensis Civitatis. (Anno 793 vel seq.). Esto pastor, non mercenarius; rector, non subversor; lux et non tenebrae; civitas firma fide murata, non domus pluviis diruta; miles Christi gloriosus, non apostata vilis; praedicator, et non adulator. Melius est Deum timere quam hominem; plus Deo placere quam homini blandiri. Quid est adulator nisi blandus inimicus? Ambos perdit, se ipsum et suum auditorem. Isti sunt, qui consuunt pulvillos sub omni cubitu (Ezech. 13, 18), et oves Christi morbidas faciunt, non sanatas” (“Be a shepherd, not a mercenary; a ruler, not an insurgent; light and not darkness; a city walled with firm faith, not a house destroyed by rains; a glorious soldier of Christ, not a vile apostate; a preacher and not a panderer. It is better to fear God than to fear men; it is better to please God than to flatter a man. What is a flatterer, except a caressing enemy? He ruins both, himself and his listener. These are they, who sew cushions under every elbow and make the flock of Christ ill, not well”). Alcuin’s citation of the unusual verse from Ezechiel, combined with the allusion to the fear of

image may have lessened its impact, and a more direct exposition of the dangers of leniency in caring for sinners was presented in a canon of the Council of Paris (a.829): "For many priests, partly through carelessness, partly through ignorance, impose on those confessing guilt a form of penance at variance with what the canonical laws decree, using certain little books written contrary to canonical authority, which they call penitentials, and on this account they do not cure the wounds of sinners, but rather bathe and stroke them, fulfilling thus the prophecy, 'Woe to those who sew cushions'..."¹³³

In the arguments at Chalon and Paris, one discerns the timeless debate over how best to correct those who transgress (whether children, students, criminals, animals, or adherents to a creed or class). Should one proceed gently and trust that persuasion and encouragement will have the desired effect, or do rigorous measures of discipline and discomfort, both psychic and physical, have greater effect? The protest against the pillows of luxury placed under elbows, a scorching remark from the perspective of those who advocated ascetic purification of the clergy and proposed that laity need not be excluded from such redemptive exercises, was part of a larger debate about therapies. The language and imagery of law and religious ministry had become so mingled that discussions about constraint and correction began to turn around the therapeutic intent and efficacy of possible measures. This rhetoric of therapy was a dimension of jurisprudence that found particular force among Christian legislators and magistrates. As this chapter has shown, recourse to the paradigm of the capital sins framed a narrative of guilt that ran from the motivations of desire to evaluation of an act's moral significance; this was a more complex narrative than had inhered in the Roman forensic traditions for evaluating criminality and liability. Further, airing the ethical dimensions of a case meant that prosecutors

God, and the interpretation that the inclination to please men endangers their souls, are close to the perspectives of the council.

¹³³ MGH Conc. II, 2, p. 633: "Quoniam multi sacerdotum partim incuria, partim ignorantia modum paenitentiae reatum suum confidentibus secus, quam iura canonica decernant, imponunt, utentes scilicet quibusdam codicellis contra canonicam auctoritatem scriptis, quos paenitentiales vocant, et ob id non vulnera peccatorum curant, sed potius foventes palpant, incidentes in illud propheticum: *Vae qui consuunt pulvillos...*" Cp. Wasserschleben, *Die Bußordnungen*, 441: "Cor enim contritum et humiliatum Deus non spernit; et hoc sapientibus in poenitentia moderanda intuendum est, ne dignum scelus gladio ferula vindicent et dignum peccatum ferula gladio percutiant. Et secundum Gregorium magnopere pastoribus procurandum, ne incauti alligerunt, quod non alligandum est, et non solverint, quod non solvendum."

and priests had a greater interest in the social role of the culprit. The disorders of the individual soul had a magnified significance in that they might instigate even greater damage than the loss of one person's salvation or the injury to a particular victim. Sins were like heresies in that they might have larger properties of contamination: they might injure or be replicated in others. The task for responsible leaders of a Christian nation, then, was to guide souls through a world of dangers, to protect the vulnerable, correct the erring, and quarantine the hazardous. Such a charge required implementation at the local and individual level of parish ministry and articulation at the imperial and episcopal level of policy and sanction.

Did these ambitions and conciliar decrees produce an oppressive and, to whatever degree a medieval polity could be one, a totalitarian state that wielded its power through religious instruction and personnel? The overt promotion in imperial circles of fear as a virtue might at first blush suggest that the intent was to not only have political dissidents capitulate but also instill a religious culture of ascetic restraint more akin to that of Calvin's Geneva than to the fairly relaxed social and commercial norms of the towns and courts of earlier centuries. In addition, the careful parsing of authority to be exercised over subordinates between counts and bishops, even in matters of piety, as seen in the *Life of Liutberga*, and of the jurisdiction over conscience between laity and clergy, as seen in the conciliar acts, shows the aspirations of some factions for greater institutional supervision of both social and religious movement in the Carolingian empire. Whatever gains in compassion might have been made by a therapeutic perspective on social and religious discipline were perhaps offset by a loss of privacy in both law and faith. Yet the story of Carolingian penitentialism and its influence on Western law and society does not end there. Those living in the Carolingian world perceived the darker and troubling aspects of the power that confessors would hold over confessants, as well as the possibility that such domination would resemble other forms of political power that degrade all entrapped in its snares. The last chapter of this book looks at the evidence for resistance to oppression and degradation, a resistance that was, paradoxically, both co-operative and religious.

CHAPTER FIVE

CONTESTATION, CO-OPERATION, COERCION, AND RESISTANCE

Carolingians were well aware of the problematic aspects of ritualised confession and penance that had broad application and ambiguous form. Penitentialism initiated apparently extensive debate at all levels of the social and political hierarchy, and debate and reflection continued for decades—indeed centuries—as the implications and consequences of the Carolingian vision of penitential correction of the laity took hold. It is fitting, therefore, to conclude this work not only with a brief review of the immediate, 9th-century responses to penitentialism but also a consideration of a 10th-century work that indicates both the success of penitentialism and also the evolution of concerns over its implementation. The greatest tensions in penitentialism were over the rights and obligations of those who entered the court of conscience. Fears about the potential for inappropriate exercise of power produced modes of defensive resistance, as clergy and laity sought to balance the system and create a viable means of performing reconceptualised roles in prosecution, confession, ministry, recuperation, witnessing, and judgement.

The decisions of the hearts: Confessors and jurisdiction

The penitentialists' agenda described in the previous chapter was contested even in the co-ordinated councils of 813. The Council of Chalon had described a program of formalised confession and rigorous penance, both conducted under the supervision of a priest, who in turn was bound by specified procedures and authorities. To have the protocols for confession and penance articulated in the format of legal decisions, it may be argued, changed both the terms of discussion and the expectations for future deliberations about confession and penance. When practices, traditions, beliefs, and positions that previously were held or performed without legal description become the subject of legal

formulation, the reaches of experimentation, innovation, and rejection are circumscribed, and the directions of evolution are thereafter determined by the openings in the law. Furthermore, legal articulation elicits a set of objections peculiar to itself: that which previously was *ad hoc*, innocuous, negotiable, tacit, or forgiven in unregulated ritual or rationale becomes contestable when either prescribed or proscribed in law. Indeed, contestation is necessary to maintain integrity and humanity in the application of law.

The particular disputes raised by the penitential regulations proffered by the Council of Chalon were the consequence of the radical presentation of religious confession and penance as judicial activities. The traditional language of penance as a medicinal cure and the confessor as physician was assimilated into a rhetoric of justice: cure elided with correction; surgery with suffering; enquiry into symptoms resembled interrogation of a suspect. The doubled effect of a legislative context and a judicial rhetoric was to invest not just the bishop but even the priest with quasi-judicial authority and assign to him the direction of rigorous mortification of the flesh which resembled punishment. Ritualised confession and penance had assumed the trappings of a law court.

Yet the innovative expansion at Chalon of priestly authority evoked dissent, or at least modification, on the part of bishops attending other councils. Doubts about the ability of clergy less experienced, less educated, and less socially or politically well placed than bishops to wield judicial authority effectively and properly seem to underlie several proposals made at the Council of Rheims. While in accord with the positions that Gregory's *Liber Pastoralis* should be the primary text for the instruction of both higher and lower clergy and that priests ought to know how to hear confessions and suggest canonical penances, the Council of Rheims did not consider written texts sufficient for the guidance of priests acting as confessors.¹ Instead, favouring episcopal authority over textual authority, the Council of Rheims advised that

¹ Cap. 10: "Lectae sunt sententiae libri pastoralis beati Gregorii, ut pastores ecclesiae intellegent, quomodo ipsi vivere et qualiter sibi subiectos deberent ammonere, quoniam teste eodem beato Gregorio aliter ammonendi sunt praelati atque aliter subditi." Cap. 12: "Omnibus his actis ventilata est ratio paenitentiae, ut sacerdotes certius intellegent, quomodo confessiones recipere et paenitentiam secundum canonicam institutionem paenitentibus deberent indicare." *Concilia Aevi Karolini (I) [742–842]*, ed. Albert Werminghoff, Monumenta Germaniae Historica [hereafter MGH], Concilia [hereafter Conc.] II, 1 (Hanover: Hahnsche Buchhandlung, 1906), 255.

bishops and priests should strive to determine how the sins of the confessing would be judged and penances assigned.²

Other decrees of the Council of Rheims suggest that the role of the confessor was considered in light of the rights of the penitent. In its attempts to determine the basis for sentencing and the range of offenses subject to judgement, the assembly seems to have favoured only limited ecclesiastical jurisdiction. The opinion entered into the record was that not all matters were subject to ecclesiastical or human judgement. In the human sphere, both bishops and secular judges should determine sentencing, because there are different modes of judgement. Some matters, however, are reserved to God alone.³ The proponents of this conservative position mustered scriptural texts that lent considerable weight to this point. The canon explicating the limits of human judgement cited (with slightly altered understanding of the syntax) the verses "Do not judge before the time when the Lord will come; he will illuminate the things hidden in shadows and will make clear the decisions of hearts, and then shall everyone have praise of God" (1 Cor. 4:5) and "What you judge in judgements will be judged of you" (Matt. 7:2).⁴ Finally, the bishops at Rheims offered a critical distinction in the sins to be remedied. Further reducing the judicial visage of the priest, the Council of Rheims considered the eight principle vices not a device for interrogation but a tool for teaching and learning.⁵ This effectively provided a different view of the jurisdictional extent of pastoral care, for instead of a continuum of sinful thought and act that brought all transgressions within the same domain, penitential processes could be distinguished as public or secret.⁶

This distinction was the now-famous "Carolingian dichotomy," which Carolingian jurists seem to have understood as a principle for

² Conc. Remense, cap. 16: "Ut episcopi et presbyteri examinent, qualiter confitentibus peccata diiudicent et tempus paenitentiae constituent." MGH Conc. II, 1, p. 255.

³ Conc. Remense, cap. 18: "Ut episcopi et iudices iudicia discernant, quia sunt quaedam iudicanda modo, quaedam Dei iudicio reservanda." MGH Conc. II, 1, p. 255.

⁴ Conc. Remense: "Scriptum est enim: *Nolite ante tempus iudicare, quoadusque veniat Dominus, qui et illuminabit abscondita tenebrarum et manifestabit consilia cordium; et tunc laus erit unicuique a Deo* (1 Cor. 4:5), et illud memores sint: *In quo enim iudicio iudicaveritis iudicabitur de vobis.* (Matt. 7:2)." MGH Conc. II, 1, p. 255.

⁵ Conc. Remense, cap. 13: "Ventilata est ratio octo principalium vitiorum, ut unusquisque diversitatem illorum sciret et ab illis Domino auxiliante se intellegeret custodire et aliis praedicare." MGH Conc. II, 1, p. 255.

⁶ Conc. Remense, cap. 31: "Ut discretio servanda sit inter paenitentes, qui publice et qui absconse paenitere debent." MGH Conc. II, 1, p. 256.

allowing the conduct of religious penance alongside the judicial processes of secular courts. As stated by the Council of Arles, in the form apparently adopted in imperial legislation, "Those who are convicted of a public crime are to be judged in the public forum and should perform public penance in a manner prescribed in canon law."⁷ Although thus affirming the integration of judicial and religious processes in a Christian republic, the council also recognised the need to clarify the prerogatives peculiar to each of the secular and ecclesiastical fora, and issued a canon prohibiting the use of basilicas or their foyers as the sites of secular courts (*placita publica et secularia*).⁸ Similarly, imagining the progression of justice as passing through cooperative relays of lower and higher authorities permitted the Council of Arles to devise a system that would integrate secular and religious processes in ascending stages of authority and power. Counts and secular judges must obey the bishop; the bishop could send "the insolent" (with a special indication that these might be secular judges oppressing the poor) to the king for royal justice.⁹

Debates over the administration of religious confession and penance were thus part of a larger transformation. The apparatus of ecclesiastical discipline was evolving into a judicial system whose jurisdiction included laity and which, in its consideration of offenses, adjudicants, processes, and penalties, was in competition with secular courts.¹⁰ Surviving canons trace a path of experimentation and negotiation in reconciling the two systems. There were canons specifying that the murder of a priest or bishop would be adjudicated by the king but that

⁷ Cap. 26: "Ut qui publico crimine convicti sunt rei publice iudicentur et publicam paenitentiam agant secundum canones." MGH Conc. II, 1, p. 253. This canon also appears as cap. 25 in "Karoli Magni Capitula e Canonibus Excerpta a. 813." MGH Conc. II, 1, p. 297. Other texts express the idea in different words: cf. Theodulf of Orleans, "let them come publicly to confession and do penance publicly. If the act is secret, let them come secretly to a priest and make a pure confession; they should do penance secretly." See Sarah Hamilton, *The Practice of Penance, 900–1050*, Royal Historical Society Studies in History (Woodbridge, Suffolk, and Rochester, NY: Royal Historical Society and Boydell Press, 2001), 5 n. 17.

⁸ Conc. Arelat, cap. 22: "Ut placita publica et secularia neque in atriis basilicarum neque in ipsis basilicis fiant, dicente Domino: Domus mea domus orationis vocabitur." MGH Conc. II, 1, p. 253.

⁹ Conc. Arelat, capp. 13 and 17. MGH Conc. II, 1, p. 252.

¹⁰ See Hélène Noizet, "Alcuin contre Théodulphe: Un conflit producteur de normes," *Annales de Bretagne et des pays de l'Ouest* 111 (2004) [special issue: "Alcuin, de York à Tours: Écriture, pouvoir et réseaux dans l'Europe du haut Moyen Âge"]: 113–29.

whoever killed a monk or cleric would be subject to the judgement of the bishop.¹¹ Other canons proposed that the bishop would also arbitrate when a lay person wished to bring suit against a cleric, but when a cleric wished to sue a lay person, the parties should enter a penitential forum.¹² In one of the few explicit statements about the protections given those who confess in the penitential forum, one text asserts that anyone who voluntarily makes a confession to a priest cannot therefore be condemned by anyone.¹³

By the mid-9th century, Hincmar of Rheims seems to have been exploring the possibility that a range of options might be distributed across both secular and ecclesiastical jurisdictions, and with variation according to person. At times he invoked the cooperation of secular and ecclesiastical authorities, as in his opinion on unrepentant witches: "Such persons, however, if it is found that they do not wish to emend and correct themselves from such activities, ought to be seized with fervent zeal. And if some of them are slaves, they may be castigated with beating and crucifyings so that they come to emendation; if, however, they are free men, a worthy imprisonment and strict penance ought to coerce them. The king, moreover, if men of this sort cannot be healed with ecclesiastical medicine, ought to deprive these impious persons of their land by judgement of equity."¹⁴ Hincmar's appreciation for the possibilities of joint adjudication by secular and ecclesiastical authorities

¹¹ Can. Greg.: "Qui episcopum aut presbyterum occidit, regi dimittendus est ad iudicandum; qui occidit monachum vel clericum, in iudicio episcopi est, vel arma relinquat et deo serviat, licet vii annos peniteat." Theod. "Si quis monachum vel clericum occiderit, arma relinquat et Deo serviat vel vii annos peniteat. In iudicio episcopi est. Qui autem episcopum vel presbyterum occiderit, regis iudicium est de eo." Hermann (F.W.H.) Wasserschleben, *Die Bußordnungen der abendländischen Kirche* (Graz: Akademische Druck- u. Verlagsanstalt, 1851; repr. 1958), 132, 172, 188.

¹² Can. Wallici: "Si laicus clericum qualibet causa competere voluerit, episcopi veniant arbitrio. Si clericus laicum competere voluerit, ad iudicis poenitentiam debent venire." Wasserschleben, *Die Bußordnungen*, 131.

¹³ Ibid.: "Si quis commissio dilecto exportare (?ex spontanea) voluntate confessionem venerit ad sacerdotem, a nullo eum damnari praecipimus." Wasserschleben, *Die Bußordnungen*, 132.

¹⁴ "Quos tamen, si emendare se a talibus atque corrigere nolle reppererit, ferventi zelo debet comprehendere et, siquidem servi sunt, verberibus cruciatibusque, ut ad emendationem pervenire valeant, castigare, si vero liberi, in clausione digna et districta poenitentia eos debet coercere. Rex autem, si huiusmodi homines ecclesiastica medicina sanari non possunt, aequitatis iudicio ut impios debet de terra perdere." Hincmar of Rheims, *De divortio Lotharii regis et Theutberga reginae*, ed. Letha Böhringer, MGH, Conc., IV, Supplementum I (Hanover: Hahnsche Buchhandlung, 1992), 104.

is also evident in his approach to Lothar's divorce; he opined that fair judges should consult the Roman Law on debauchery, incest, and the shamefully married. Those principles of secular law, he indicated, were incorporated into ecclesiastical law and would be in effect when a woman comes to the Church for canonical judgement.¹⁵

The consequences of the increased judicial aspect of religious confession and penance were known not only to jurists and authorities with jurisdictional interests. All would be affected by the changes in the role of the priest, as what had begun as a curriculum of spiritual studies became the framework of both ecclesiastical and imperial law. Augmenting the priest's duty to provide moral direction to his flock with a formalised process for the investigation and disciplining of each parishioner invested priests with powers that were not intrinsic to their previously recognised duties to baptise, consecrate the Eucharist, administer oils, preach, and assist at death. The developing penitential system had implicit powers of coercion and punishment.

Rod and staff: The exercise of pastoral power

The use of coercion in the cause of salvation was a sensitive topic both within and outside court circles in the wake of the policy of using baptism as an expression of conquest concomitant with Charlemagne's military suppression of resistance on the eastern frontier.¹⁶ Alcuin had

¹⁵ *De divortio*, 103.

¹⁶ Current scholarship maintains that although the chronicles depict several mass baptisms in conjunction with military conquest, it should be recalled that the baptismal project was not under military supervision but was directed by missionary clergy, dispatched largely from Bavaria and new sees in Saxony. Alessandro Barbero, *Charlemagne, Father of a Continent*, trans. Allan Cameron (Berkeley, Los Angeles, and London: University of California Press, 2004), 241–44. See the excellent discussion of Alcuin's perspectives on the meaning of *imperium* and its relation to evangelisation by Mary Alberi, "The Evolution of Alcuin's Concept of the *Imperium christianum*," in *The Community, the Family and the Saint: Patterns of Power in Early Medieval Europe. Selected Proceedings of the International Medieval Congress, University of Leeds, 4–7 July 1994, 10–13 July 1995*, ed. Joyce Hill and Mary Swan (Turnhout: Brepols, 1998), 3–17. The role of Alcuin in influencing the progress of evangelisation is set forth with great clarity by Beatrix Dumont, "Alcuin et les missions," *Annales de Bretagne et des pays de l'Ouest* 111 (2004) [special issue: "Alcuin, de York à Tours: Écriture, pouvoir et réseaux dans l'Europe du haut Moyen Âge"]: 417–29, with special attention to the objective of establishing peace and concord through preaching and teaching. Fascinating discussion of the cultural and textual precedents for the strangely aggressive measures

protested against Charlemagne's decree that those who refused to participate in the Christian rites of baptism or Lenten fasting were subject to the death penalty. While a military leader might see such resistance to Christian rites as evidence of insurgency, the cleric held fast to the importance of free will in cultivating the desire for God. "Faith arises from the will, not from compulsion. You can persuade a man to believe, but you cannot force him. You may even be able to force him to be baptised, but this will not help to instill the faith in him."¹⁷ The Council on the Banks of the Danube (*ad Ripas Danubii*) held in 796, presided over by the preeminent clerics of the empire, Paulinus of Aquileia and Arno of Salzburg, recalled the verse from Scripture, "And I have other sheep which are not of this sheepfold, and it behooves me to lead them to my voice and that there be one shepherd and one flock" (Ioh. 10:16) and then pointed out that the verse specifies that the task of conversion is God's and should not be understood as referring to any human.¹⁸ In another effort to find a biblical foundation for protection of the unconverted against forced baptism, the council invoked the prohibition against moving boundary-stones of forefathers (Prov. 22:28) as a precept precluding any change of the occasions for baptism, which had been established by all canonical and biblical authorities as Easter and Pentecost alone.¹⁹ Since baptism was a standard priestly duty, the question of how long a period was required for pre-baptismal catechism was answered with a statement that it should be determined by the decision of a priest.²⁰

Actions other than baptism to secure the spiritual welfare of the emperor's subjects, however, such as the suppression of heresy, could invite arguments for coercion. Imperial expansion of Christian domains created perceived threats from, if not actual armed conflict with, pagans in the north and the east and Muslims in the south and the west that contributed to the view that aggressive measures were in

to be taken against non-Christians that were presented in the *Capitulatio de partibus Saxoniae* is in Yitzhak Hen, "Charlemagne's Jihad," *Viator* 37 (2006): 33–51.

¹⁷ Cit. and trans. Barbero, *Charlemagne*, 243.

¹⁸ Conc. ad. Ripas Dan., MGH Conc. II, 1, p. 172.

¹⁹ Conc. ad. Ripas Dan., MGH Conc. II, 1, pp. 173–75. The verse from Proverbs was a favourite *regula iuris* cited with various interpretations by a number of Carolingian authors.

²⁰ Conc. ad. Ripas Dan., MGH Conc. II, 1, p. 175.

order.²¹ Once again, the arguments presented by the bishops of Lyons regarding relations between Christians and Jews illuminate some of the contours of the debates regarding the extension of ecclesiastical authority over those other than clergy, who were clearly subject to the internal disciplinary laws of the Church. The foundations of the argument were laid by Agobard, although it was Amulo who developed the exegesis for juridical meaning. In arguing for the segregation of Jews and Christians, Agobard had tried to map current experience of religious diversity onto a scriptural ethnography and its moral meaning. Providing citations from the prophets Haggai and Zachariah in which the Lord called his people polluted and said that he would dissolve the fraternal ties between Judah and Israel, Agobard concluded that this was to create a righteous rupture in the fraternal relations of Judaism and Christianity. It was the condition of descent from Abraham, in his view, that provided an historical precedent for the segregation of Jews.²² Rehearsing Paul's interpretation of the story of Sara and Hagar (Gal. 4) and the two children they bore to Abraham, one slave and one free, Agobard matched Hagar to Jerusalem, "in slavery with her children" and Isaac to Christians, "children of promise." "...But what does the scripture say? 'Cast out the slave and her son, for the son of the slave shall not inherit with the son of the free woman.'" Agobard's interpretation was that when the slave Hagar and her child were cast out from Abraham's house by Abraham's wife Sara, it signified the separation of the Jews and Christians.²³

²¹ Carolingian glosses on a 9th-century manuscript seemingly from Lyons show the confluence of anti-Jewish, anti-heretical, apocalyptic, and penitential perspectives with reference to the seven capital sins; the question of coerced correction of heresy is also raised ("Filius contumax hac proteruus, inoboediens patri et matri, ut reor, a parte totum hereticos significat, qui nec dei preceptis oboediunt nec institutionem matris, id est ecclesiae obtemperant. Idcirco quicumque talis est, necesse est ut ad concilio sacerdotum perductus, aut pristinum errorem corrigat aut si noluerit, de imperium ecclesiae proiectus sententiis patrum, quasi lapidibus obrutus, intereat"). Paul-Irénée Fransen, "La discipline de l'Église dans un commentaire anonyme au Deutéronome écrit à Lyon au IX^e siècle," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 83 [127] (1997): 52–66 (quotation from p. 62).

²² ("De Iudaicis superstitionibus") Agobardus Lugdunensis, *Opera Omnia*, ed. L. Van Acker, *Corpus Christianorum Continuatio Mediaevalis* [hereafter CCCM] 52 (Turnhout: Brepols, 1981), 208, 216–18. In his review of the traditions that Jews are to be honoured because of the patriarchs, Agobard asserted that Saracens and Africans, as well as other peoples, are descended from Abraham, and this obviated any argument for Jewish superiority.

²³ "*Sed quid dicit Scriptura? Eice ancillam et filium eius, non enim heres erit filius ancillae cum filio liberae. Expulsus ergo est de paterno domo Iudaicus populus, atque*

What is significant in this argument is its precedent for what the theorists of the 11th and 12th centuries would describe as “righteous affliction.”²⁴ To Agobard’s successor Amulo, if Jews were heretics and false prophets, then the Church and Christian rulers had an obligation to respond. When Agobard interpreted the story of Hagar’s separation from Abraham’s household as an historical explanation for the separation of Judaism and Christianity, it was Isaac and Ishmael, the sons, who were the central figures. Amulo, in contrast, took the text as a description of Christian power. He focussed on the relationship between Sara and Hagar and transformed the story into an argument for coercion or, rather, affliction for the purpose of obtaining conversion. To persuade the emperor that both his Roman and Frankish predecessors “exercised discipline...for either coercing or correcting” blasphemers, Amulo drew upon Augustine’s interpretation of the story of Sara and Hagar, which was framed around three concepts dear to Carolingian penitentialists: divinely ordained disposition of authority, the sinfulness of pride, and the utility of carnal suffering. Augustine had argued (wherever our sympathies may tend) that Sara was exercising rightful power as Hagar’s mistress and that God intended for Hagar to suffer that affliction and to serve Sara. “The Donatists,” Augustine wrote,

say that they suffer persecution from Catholic kings or from Catholic princes. What persecution? Affliction of the body; at times they have suffered that. The persecution which they wage is more serious: it is a delusion of the spirit... Sara afflicted her slave, Hagar. After her slave-woman began to be haughty, Sara afflicted her more seriously, and she fled... A free woman afflicted a slave woman, and the Apostle does not call this persecution... If God wants to rouse the powerful against heretics,...let the heretics not wonder, because God incited Sara to beat Hagar... When [Hagar] ran away, an angel came to her, and said, What is it, Hagar slave of Sara? When she complained about her mistress, what did she hear from the angel? Return to your mistress. (Gen. 16:9). She was afflicted that she might return. And would that she might return!²⁵

ab hereditate filiorum Ecclesiae, quae per Christum libera effecta est, segregatus.” “De Iudaicis superstitionibus,” 216.

²⁴ Cf. Kathleen G. Cushing, *Papacy and Law in the Gregorian Revolution: The Canonistic Work of Anselm of Lucca*, Oxford Historical Monographs (Oxford and New York: Clarendon Press and Oxford University Press, 1998), 124–41.

²⁵ Augustinus Hipponensis, “Tractatus in evangelium Ioannis XI,” in *In Iohannis Evangelium Tractatus CXXIV*, ed. D. Radbodus Willems, Corpus Christianorum, Series Latina [hereafter CCSL], 36 (Turnhout: Brepols, 1954), 118–19. Cited by Amulo Lugdunensis, “Adversus Iudaeos,” J.-P. Migne, *Patrologiae cursus completus: Series latina* (Paris, 1844) [hereafter PL], 116, cols. 172–73.

Amulo added a second text written against the heretic Donatus by Augustine to justify compulsion as sometimes righteous. After he was arrested, Donatus attempted suicide but was saved by his captors. Augustine explained that this intervention was righteous, and he extrapolated the principle to the Church's right to coerce and compel the unwilling:

Those who are loved should not be cruelly left to yield themselves with impunity to their bad will. For if a bad will should always be left free, why were the disobedient and murmuring Israelites kept from evil by chastisements, and compelled to come into the land of promise? ... Why is it said to negligent pastors, "Ye have not brought back the wandering sheep, ye have not sought the perishing"? (Ezech. 34:4) ... The Church wields power, so that she may not only invite, but even compel men to embrace what is good. This our Lord taught with sufficient plainness in the parable of the feast, when the master, after he had sent a message to the invited guests and they had refused to come, said to his servants, "Go out quickly into the streets and lanes of the city, and bring in hither the poor and the maimed and the halt and the blind" (Luc. 14:21) And then, "Go out into the highways and hedges, and compel them to come in, that my house may be filled" (Luc. 14:23) ... It was right that when the Church became stronger, men should be compelled to come in to the feast of everlasting salvation. [The sheep] which is compelled is driven where it would not wish to go, but after it has entered, it feeds of its own accord in the pastures to which it was brought.²⁶

Not all were granted the power to coerce. Religious compulsion was in the purview of emperors and bishops. The arguments offered both in favour of and in opposition to religious coercion seem to have had little intersection with the arguments regarding the powers of priests, perhaps because no-one really wished to imagine that ordinary parish priests would be implicated in such volatile, even potentially violent, attacks against those not of the Catholic faith. The rationale for priestly authority in receiving confessions and assigning penances was a power of judgement rather than of coercion, i.e., the power of the keys. The so-called Petrine Commission of Matthew 16:19, "and I shall give you the keys to heaven, and whatsoever you shall bind on earth shall be

²⁶ Augustinus Hipponensis, "Epistola 173," in PL 33, cols. 754–55. Trans. adapted from *The Post-Nicene Fathers* 1, ser. 1, trans. J.C. Cunningham. Cited by Amulo, "Adversus Iudaeos," PL 116, cols. 173–74 (Augustine's letter is identified there as Epist. 204).

bound in heaven, and whatsoever you shall loose on earth shall be loosed in heaven," was apparently first applied by Alcuin to the power to bind and loose sins.²⁷

It did not escape the notice of Carolingian jurists that the power to coerce might be exercised inappropriately in the course of pastoral care. The Council of Aachen (a.816) issued a lengthy document with such rubrics as "Concerning the zeal of pastors with regard to those under their authority" and "Concerning the power conferred on bishops of binding and loosing."²⁸ The Petrine commission was analysed at some length and was glossed using excerpts from patristic texts, with generous representation of Gregory the Great and Pomerius. The Gregorian passage cited by the council details the authority of bishops who, by virtue of their office, have received the power of the keys and have been made judges who condemn and acquit others. In treating judgement of confessed sins or crimes and pastoral sentencing, Gregory urged both caution and restraint on the part of the judge, as well as fear and respect on the part of those who might be judged. He examined the implications of justice denied, whether through failure to judge or through unjust sentences. The Carolingian fondness for the idea that fear is salubrious is reflected in the choice of the Gregorian passage intended to resolve the question of how to balance the wrongs of injustice against the subordination of the judged. In the excerpt given at Aachen, the conclusion is that someone under the legal power (*sub manu*) of the pastor should fear to be bound, whether justly or unjustly, and should not casually find fault with the judgement of his pastor lest, even if bound unjustly, from the pride in his response, a sin would come to

²⁷ Amédée Teetaert maintained that Alcuin was the first to link power of keys to administration of penance and the special ministry of the ordained. (*La confession aux laïques dans l'église latine depuis le VIII^e jusqu'au XIV^e siècle: Étude de théologie positive* (Wetteren and Paris: J. de Meester et fils; J. Gabalda, 1926), 18.) Nevertheless, necessity could create an exemption, and in cases in which the priest was absent, the deacon might be permitted to receive a penitent to satisfaction and communion. Even the power of the keys, however, could raise the question of coercion: one of the glosses in Paris, Bibliothèque nationale de France, nouv. acq. lat. 1740 (vide supra, note 21) reads, "Nemo ex sacerdotibus a quolibet delinquenti confessionem delictorum inuitus extorquere debet." Fransen, "La discipline," 59.

²⁸ Conc. Aquisgran, MGH Conc. II, 1, pp. 354–56, 358–59. On the Council of Aachen, see Wilfried Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien* (Paderborn: F. Schöningh, 1989), 154–60.

be which had not existed before.²⁹ The absence of commentary leaves unknown whether Gregory's preference for the word *pastor* seemed to Carolingian readers to apply to priests as well as bishops, but the text's orientation to the values of submission, obedience, and respect for authority as virtues whose very abrogation would require penance supports a judicial pattern for the process of confession and penance: there should be no contempt of court.

Much as modern scholarship has been rightly interested in the effects of confession and penance as means for social reintegration and community catharsis, the medieval understanding of the events was always conditioned by the conviction that God was the invisible but primary party, with power over both the penitent and the judge. How much scope for punishment had God granted to his ministers? Some creativity was required in the conceptual construction of penalties, for unlike secular courts, no money could change hands; and since the offended party was always God, rather than the priest or even the victim of the crime confessed, the terms of compensation or retribution were mysterious. The question was particularly difficult to entertain in a society with no penal codes and few traditions of institutional administration of corporal punishment.³⁰ Those whose status, guilt, or recalcitrance was of an order that required measures beyond self-administered asceticism were sent to monasteries.³¹ The Council of Chalon proposed this correction for defrocked clergy who failed to perform penance.³²

²⁹ Conc. Aquisgran.: "Sed utrum iuste an iniuste obliget pastor, pastoris tamen sententia gregi timenda est, ne is, qui subest et cum iniuste forsitan ligatur, obligationis suae sententiam ex alia culpa mereatur. Pastor quisque vel absolvere indiscreta timeat vel ligare. Is autem, qui sub manu pastoris est, ligari timeat iuste vel iniuste nec pastoris sui iudicium temere reprehendat, ne, etsi iniuste ligatus est, ex ipsa tumidae reprehensionis superbia culpa, quae non erat, fiat." MGH Conc. II, 1, p. 359.

³⁰ Review of the historiography in the German debates over the "origin" of European penal law is in Heinz Holzhauser, "Zum Strafgedanken im frühen Mittelalter," in *Überlieferung, Bewahrung und Gestaltung in der rechtsgeschichtlichen Forschung*, Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, n.s. 69, ed. Stephan Buchholz, et al. (Paderborn: F. Schöningh, 1993), 179–92. See also Raymund Kottje, "Buße oder Strafe? Zur *iustitia* in den *libri paenitentiales*," in *La giustizia nell'alto medioevo (secoli V–VIII)*, 7–13 aprile 1994, Settimane di Studio del Centro italiano di Studi sull'alto medioevo, 42 (1995), I:443–74.

³¹ Mayke de Jong, "Monastic Prisoners or Opting Out? Political Coercion and Honour in the Frankish Kingdoms," in *Topographies of Power in the Early Middle Ages*, vol. 6, ed. Mayke de Jong and Frans Theuws, Transformation of the Roman World (Leiden: Brill Academic Publishers, 2001), 291–328.

³² Conc. Cabill., cap. 40: "Unde statuimus, ut, gradu amisso, agenda paenitentiae gratia in monasterio aut canonico aut regulari mittantur..." MGH Conc. II, 1, pp. 281–82.

Yet this, too, was a topic of debate and resistance. Monastic autonomy, ever a delicate issue, was at stake. While it was within the power and freedom of a monastery to receive the sick, it was a clerical, rather than a monastic, privilege to determine penance for the laity.³³ It is not clear what rights an abbot or monks had to refuse admission to criminals doing penance.³⁴ There might well be cause for an abbot to be concerned: some clerics opined that monasteries could be used as sites of penitential incarceration or sequestration for those who were guilty of serious or repeated offenses such as murder, rape, theft, sacrilege, or perjury; the arrangement might be for life or, according to other opinions, until a priest judged the sentence served.³⁵ An alternative for a penitent criminal who refused to enter a monastery might be lifelong exile.³⁶

Monastic confinement, however utilitarian in some instances, was nevertheless always theoretically intended to provide an appropriate religious environment for a sacral process of purgation. Any religiously construed punishment had to be borne wholly and exclusively by the penitent. Unlike secular justice, wherein families or superiors might be involved in providing surety, compensation, or constraint on the behaviour of another, a religious judiciary could not allow the sinfulness of one free-willed soul to affect the condition of another. In contrast to heresy, which was feared as a spreading contagion, religious restoration insisted upon the moral and spiritual autonomy of the individual.

³³ Theodorus, Poenitentiale: "In potestate et libertate monasterii est susceptio infirmorum in monasterium. Nec non libertas monasterii est poenitentiam saecularibus iudicandum, quia proprie clericorum est." Wasserschleben, *Die Bußordnungen*, 209. See also the comments by Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (Oxford and New York: Clarendon Press and Oxford University Press, 1997), 89–90.

³⁴ For some discussion of the mutual recognition that laity, even royalty, could not intrude at will into the sacred space of the monastery, albeit discussion of a 7th-century source, see de Jong, "Monastic Prisoners," 308–12.

³⁵ See Mayke de Jong, *In Samuel's Image: Child Oblation in the Early Medieval West* (Leiden, New York, and Cologne: E.J. Brill, 1996), 252–66, for important discussion of Carolingian protests against the use of monasteries for criminals and also regarding the residence of public penitents.

³⁶ E.g., "Qui multa mala fecerit, id est adulterium cum pecude et cum muliere et furtum fecerit, monasterium introeat et paenit, usque ad mortem."; "Qui enim multa mala fecit in homicidio, in sacrilegio, in parricidio, in furtu, in rapina, in fornicatione, in adulterio, in mendacio, et perjurio, et postea conversus poenitere cupit, relinquit terrena omnia, intrans in monasterii servitium, et poeniteat quae gessit, quamdiu vixerit, ut sacerdos iudicaverit. Si autem in monasterii servitium intrare noluerit, duriter, in laico habitu, exul usque ad exitum vitae poeniteat." Wasserschleben, *Die Bußordnungen*, 526, 570.

Ascetic deprivation would seem to affect none but the penitent. The salvific purpose of penitential separation or seclusion was intended to ensure that no other party would be placed in the situation of inappropriately inflicting punishment on a social superior; institutional punishment would ensure that no other party would have his soul endangered by the bloodshed or profit that came with private measures of retribution or civil suits. The autonomy of the penitent, the religious goal of redemption, and the welfare of the Christian community were represented in monastic enclosure.

There are signs, however, that this perception of spiritual individuality strained the credence of many and that this aspect of Christianising law was radical. The autonomy of each soul meant that penitential remedies should not inflict damage upon those normally bound to the penitent; penance should ideally entail no loss of the rights of others, unless those rights had been formally ceded and the penitent ritually separated from the web of social and economic obligations. But Carolingians, for all the religious rhetoric regarding the vanity of attachment to the temporal and social world, construed social life as woven with obligations. There were few occasions of individual action or passibility that did not affect the claims of others. Spouses, masters, lords, heirs, and assigns depended upon an individual's service, support, and resources; conversely, the prospective penitent had claims to the support and resources of others. Seemingly in parallel with habits of assuming legal and financial responsibilities for family members, Christians offered not only prayers but also penances for the souls of deceased family members. The practice of vicarious penance seems to have been especially prevalent among the nobility of Saxony.³⁷

Although penitential suffering was offered as a complex demonstration of sacrifice, atonement, remorse, and submission to God, in some situations that demonstration satisfied the desires for retributive justice in the social domain as well. Penance could serve as punishment because it, too, could be regulated in its measure and, in its specified termination, could be an implicit contract that the obligations between the penitent and society would be resumed, unless it was a penance for life. Remorse re-established the social bond that was severed in transgression and became valuable currency in Western law. The ritualised

³⁷ Hamilton, *Practice of Penance*, 180–81.

demonstrations of remorse in modern legal proceedings are, one might suggest, a legacy of the Christian penitential past.

Yet the religious dimension of the penitential process distinguished penance from secular punishment in function if not form, and therein lay possibilities for individual triumph over prosecution, even for the guilty. The asocial form of penance was closely related to the theological premises that the individual has free will and an exclusive relationship with God. Penitential suffering was not simply physical discomfort; it was abstinence from the fundamental signs of social connection: food, sex, and commercial and military activity. What might initially be taken as isolation was also an independence that provided room for the creation of new narratives of power. The combination of independence and the possibility of redemption was why medieval penance could rarely, other than in modern descriptions of its rituals, be treated as a simple process of reconciliation and reintegration. Truly successful penances did not merely restore a penitent to a previous condition or to the state of being as good or acceptable as everyone else. The hope was that the penitent might, through suffering for God, obtain special grace. There was always the potential for the penitent to excel in purity and to progress to a position of moral perfection. Penance thus did not conserve social norms or relationships, or even paradigms of power.

It was the transformative, paradoxical, and destabilising possibilities inherent in penance that provided material for early medieval authors. Even the *Life of Liutberga*, which the author (probably a cleric from Fulda) shaped as traditional, in its resonances with the *Lives of the Desert Fathers and Mothers*, and clerical, in its allusions to penitential jurisprudence,³⁸ is implicitly a validation of the independence of the individual will. The descriptions of Liutberga's experiences as an ascetic, although similar to those found in other hagiographies, are nevertheless individuating: her visions and endangerment by demons are manifestations of her vulnerability, courage, and special grace. The author is

³⁸ The author's engagement with juridical problems is seen in episodes of the *Life* built around the problems of the contaminating mice, hidden or forgotten sins, and the culpability of a mother who was churchd but whose child, conceived on a Sunday, died unbaptised. Albert Demyttenaere, "The Cleric, Women and the Stain: Some Beliefs and Ritual Practices Concerning Women in the Early Middle Ages," in *Frauen in Spätantike und Mittelalter: Lebensbedingungen—Lebensnormen—Lebensformen. Beiträge zu einer internationalen Tagung am Fachbereich Geschichtswissenschaften der Freien Universität Berlin 18. bis 21. Februar 1987*. Ed. Werner Affeldt (Sigmaringen: J. Thorbecke, 1990), 148, on Liutberga's mice.

conservative in the depiction of Liutberga's conscientious submission to all the secular and ecclesiastical authorities to whom she was subject (as when she explains to a visitor that, even though a solitary, she cannot leave her cell without the permission of her priests and bishop) but cannot avoid celebrating a penitent who ultimately commands the ministry of her superiors. Upon her deathbed, Liutberga beseeched the priests who had been hearing her daily confessions and her fellow-nuns and visitors to pray for her. When all were petitioning for remission of her sins, having received the last rites, she lay down before the crucifix which had been above her window and, spreading her arms in the form of a cross and with her head resting on the ground, as she died she invoked the memory of the thief who entered Paradise:³⁹ "You who deigned to ascend the gibbet of the Cross for us sinners and had mercy upon the crucified thief, deign to have mercy on me, because into your hands I commend my spirit."⁴⁰

In echoing Christ's call from the Cross to his Father (Luc. 23:46), Liutberga's last words demonstrate to the audience the parallels between an obedient, suffering penitent and their Lord. The disturbing corollary might be that those who inflicted torments, acquiesced in judgement, or exercised authority over the penitent were conceivably similar to Herod, Pilate, the crucifying soldiers, or the Jews and Romans implicated in the Passion. It was this more dangerous hermeneutic that intrigued the Saxon canoness Hrotswitha, who—80 years after the Saxon hagiographer wrote the *Life of Liutberga*—wrote a play that recreated the beloved and enigmatic legend, known in the 5th century, of Thaïs, the courtesan penitentially incarcerated by her confessor until her death. Like the hagiographer, the dramatist resituated the prescriptions of Carolingian

³⁹ On Carolingian readings of the scriptural passage describing the exchange between Christ and the thief, vide supra, Chapter Two, p. 104.

⁴⁰ "Cum prius aliquantulum infirmari coeperat, accersitis presbiteris quotidie confessionem singulis faciens simulque cum oratione benedictiones accipiens usque praescitum tempus ab ea hora, qua spiritum Domino reddere debuit, et convenientibus presbiteris cum sororibus multisque aliis convenientibus, omnes pro se concorditer orare supplicabat et omnes postulans peccata sibi remittere et accepto viatico prosternens se ante crucem, quam fixam super fenestram habebat, et expansis in modum crucis brachiis, capite in terram dimisso, vox, quae tandem in fine precis fuerat audita, haec erat: *Qui crucis patibulum pro nobis peccatoribus ascendere dignatus es et latroni pendenti misertus fuisti, michi misereri digneris, quia in manibus tuas commendo spiritum meum.*" Ottokar Menzel, ed., *Das Leben der Liutbirg. Eine Quelle zur Geschichte der Sachsen in karolingischer Zeit* (Leipzig: K.W. Hiersemann, 1937), 45–46.

councils and bishops for penitential practices in the realm of social and psychological responses. Her text was written in the aftermath of apparently extensive debate over measures to suppress behaviours or persons deemed sinful, and the danger that the authority to implement those measures might be abused or misallocated. In her depiction of humility, suffering, and redemption, Hrotswitha outlined the dynamics of cooperation and resistance in the relationship between the powerful and the submissive that inheres in the practice of ritual confession, penance, and absolution. In one of the most thoughtful and interesting early medieval explorations of the perspectives of both confessor and penitent, she posed the problem: what happens to a penitent who ends up in the care of a proponent of extreme rigourism?

*“Non insanio sed sanum sapio”:⁴¹ Meritorious penance
and resistance*

Written around A.D. 965 at Gandersheim, less than a day’s ride from Liutberga’s cell near Wendhausen, Hrotswitha’s *Thaïs* provides a useful retrospective view of the problems, real or potential, attendant upon the Carolingian formulation of penitential prosecution. In her retelling of how the ascetic Paphnutius went disguised as a lover to the rich and beautiful courtesan Thaïs in order to enclose her in a small cell for penitential reflection, Hrotswitha aired the dangers, costs, and illusions latent in the elements of the Carolingian system of penance. The academic debates over sacerdotal authority, coercion, mortification of the flesh, clerical education and knowledge of written authorities, and the inculcation of fear, submission, and obedience find personal voices in her play “Paphnutius.”

Hrotswitha’s first departure from the common fund of late antique stories of harlots brought to repentance is that she cast her Paphnutius as an intellectual, even a pedant, and a jurist. In a lengthy opening scene, Paphnutius teaches his ignorant and confused disciples about the relationship between the Creator and man in a discourse dense with

⁴¹ “I am not insane, but savouring good health again.” Hrotsvitha, *The Plays of Hrotsvit of Gandersheim*, trans. Katharina M. Wilson (New York: Garland Pub., 1989), 110; Hrotsvitha, *Opera Omnia*, ed. Walter Berschin, Bibliotheca Scriptorum Graecorum et Romanorum Teubneriana (Munich and Leipzig: K.G. Saur, 2001), 232.

references to the seven liberal arts, the science of optics, the elements and their contraries, and most particularly (to the point of explaining the mathematical relationships of the diatesseron, epitriton, hemioleos, and diapason) the study of music. In this remarkable display of erudition, Paphnutius weaves a web of explanation that joins his description of the soul with the patterns of the heavens, through which the music of the spheres pulses.⁴² His view of man as the microcosm that corresponds to the macrocosm is elegant but inhuman—and tedious to his disciples.⁴³ The occasion of the oration is that Paphnutius thinks that juridical action is required if an injury of which he is aware is not to go unavenged.

The injury in question must be defined with juridical precision, a task complicated by the fact that the injured party cannot be injured, as Paphnutius explains with exquisite theological correctness, for it is God. There is a metaphor, he explains, operating in the charge of injury to God, and the real crime is that of disobedience to *imperium*, governing authority, the crime that will come to be known as *lèse-majesté*.⁴⁴ The criminal, of course, is Thaïs, by her beauty leading men to perdition and causing them to alienate the wealth of their families as well as their own, and by her charms causing men to fight over her and shed blood. After the disciples affirm that, first, citizens in this world are endangered and citizens of heaven aggrieved and, second, that Thaïs is indeed notorious, two conditions for legal action, Paphnutius sets forth to confront Thaïs.⁴⁵

⁴² Hrotsvitha, *Pafnutius* (Berschin ed.), 218–23.

⁴³ *Pafnutius* (Berschin ed.), 224, ll. 5–7: “Discipuli: . . . sed tedet nos philosophicae disputationis—quia nequimus sensu emetiri—scrupulum tuae rationis.” *Paphnutius* (Wilson trans.), 100: “We are weary of this philosophical explanation, because our minds are incapable of following the subtlety of your reasoning.”

⁴⁴ *Pafnutius* (Berschin ed.), 219: “Paphnutius: Licet illa impassibilis maiestas affici non possit iniuriis tamen ut usum nostrae fragilitatis metaforicae transferam in deum—quae maior iniuria dici potest quam quod eius imperio cuius gubernaculis maior mundus obtemperanter subditur solus minor contraluctetur?” *Paphnutius* (Wilson trans.), 95: “Even though His Majesty,/ incapable of suffering, cannot be affected by injury,/ yet when I transfer our own human weakness metaphorically to God, then what greater injury could there be than that the microcosm alone resists the power of Him to whose rule the macrocosm obediently submits?” (Hrotsvitha’s awareness of the operations of juridical metaphor is striking. On juridical metaphor, vide supra, Chapter Two, pp. 95.)

⁴⁵ *Pafnutius* (Berschin ed.), 225–26: “Res civibus periculosa . . . Eius infamia nulli est incognita . . . O nefas detestabile . . . quin tecum contristentur cives patriae caelestis . . .” Scandal or *infamia* were standard forensic measures of a crime in Roman as well as canon law and called for public prosecution. For a summary review of the concept and

The initial interview between Paphnutius and Thaïs brings into play a discourse of penance and eroticism that revolves around secrecy, submission, and satisfaction and sets Thaïs on an equal footing with the man who has come to overcome her. Thaïs welcomes Paphnutius with the openness of love; Paphnutius castigates and threatens her, seemingly with anger and hatred. This inversion of virtue and vices is further complicated by the competing penitential language used by each. When Paphnutius suggests that the secrecy of their conference begs a secret place, Thaïs eclipses his formal understanding of penitential secrecy with a riddle about the place so secret it is known only to God, from whom nothing is hidden, a clear reference to the oft-cited verses that were the foundation of religious confession.⁴⁶ When Paphnutius challenges her regarding God's justice with the question, "Do you believe that He overlooks the deeds of the wicked or that he metes out justice as is due?" Thaïs answers with pious and judicious clarity, "I believe that he weighs the merits of each person justly in his scale and that each according to his desserts receives reward or punishment from him."⁴⁷ It is Thaïs who, in response to Paphnutius' calls for conversion, understands and can articulate the contrition of the heart: "How can

its evolving vocabulary in Roman and Gratianic canon law, see G.R. Evans, "Notoriety: A medieval change of attitude," *Eccelesiastical Law Journal* 4 (1997): 629–38. A great desideratum in the scholarship of early medieval canon law is detailed investigation of the use of the term *scandal* in legal sources; it is prominent in (e.g.) the Pseudo-Isidorian decretals. See Abigail Firey, "Blushing Before the Judge: Pastoral Care and the Administration of Justice in the Carolingian Empire," in *A New History of Penance*, ed. Abigail Firey, Brill Companions to the Christian Tradition, 14 (Leiden and Boston: Brill Academic Publishers, 2008), 195–200, for some instances of scandal as the impetus for prosecutions in the Carolingian period.

⁴⁶ *Paphnutius* (Berschin ed.), 229, ll. 1–12: "Paphnutius: Secretum nostrae confabulationis—desiderat solitudinem loci secretioris—Thaïs: Ecce cubile bene stratum—et delectabile ad inhabitandum—Paphnutius: Estne hic aliud peniculus—in quo possimus colloqui secretius? Thaïs: Est etenim aliud [tam] occultum—tam secretum—ut eius penetral nulli preter me nisi deo sit cognitum—Paphnutius: Cui deo? Thaïs: Vero—Paphnutius: Credis illum aliquid scire? Thaïs: Non nescio illum nihil latere." *Paphnutius* (Wilson trans.), 106–07: "Paphnutius: Isn't there another room where we can converse more privately, one that is hidden away? Thaïs: There is one so hidden, so secret, that no one besides me knows it, except for God. Paphnutius: What God? Thaïs: The true God. Paphnutius: Do you believe He knows what we do? Thaïs: I know that nothing is hidden from his view." On the importance of secrecy for true confession, see Chapter One, *supra*.

⁴⁷ *Paphnutius* (Wilson trans.), 107. *Paphnutius* (Berschin ed.), 229: "Paphnutius: Utrumne reris illum facta pravorum neglegere—an sui aequitatem servare? Thaïs: Estimo ipsius aequitatis lance singulorum merita pensari—et unicuique prout gessit sive supplicium sive praemium servari."

there be a place for appalling lust in my heart now when it is filled entirely with the bitter pangs of sorrow and the new awareness of guilt, fear, and pain?"⁴⁸ Paphnutius, seemingly obsessed with damnation and punishment, his capacity to promise them and his desire to subject Thaïs to pain, begins to appear quite unpleasant.⁴⁹

The contrast between their parallel positions of power, in which Paphnutius' authority over his disciples in religion is matched by Thaïs's power over her lovers, is altered when Thaïs abandons them and willingly and confidently places herself under Paphnutius' direction. The scene in which Thaïs is immured, however, seems designed to elicit not only vicarious but also moral discomfort: once again, it is not clear that Paphnutius is a model confessor. Despite the protest of the abbess to whom Thaïs is consigned that the measures Paphnutius orders may be too harsh for a patient of delicate constitution, Paphnutius, applying his theoretical medical education regarding the efficacy of contraries as cures, devises a penitential regime of darkness and austerity.⁵⁰ The moment at which appropriate boundaries seem to be crossed is when Thaïs, striving to be compliant, nevertheless balks at a condition that seems to go beyond the dignities of ascetic deprivation and into insupportable degradation: she will be enclosed without respite in her own feces and urine.⁵¹ Paphnutius invokes his doctrine of contraries, but the audience is likely to be troubled again by his command that Thaïs is not even to mention God's name because of her polluted condition.⁵² It is perhaps a sign of Paphnutius' corruption that, ironically, he forgets his own faith in the music of the human person as he silences Thaïs'

⁴⁸ *Paphnutius* (Wilson trans.), 108. *Pafnutius* (Berschin ed.), 230, ll. 9–11: "Thaïs: Et quis post haec locus pestifere delectationi in meo corde potest relinqui ubi solum intestini meroris amaritudo—consciique reatus nova dominatur formido?"

⁴⁹ *Pafnutius* (Berschin ed.), 229–30.

⁵⁰ *Pafnutius* (Berschin ed.), 235, ll. 20–24: "Quia enim aegritudo animarum—aeque ut corporum—contrariis curanda est medelis—consequens est—ut haec a solita—secularium inquietudine sequestrata—sola in angusta retrudatur cellula—quo liberius possit discutere sui crimina. *Paphnutius* (Wilson trans.), 113: "But because the sickness of both body and soul must be cured by the medicine of contraries, it follows that she must be sequestered from the tumult of the world,/ immured in a small cell, so that she may contemplate her sins undisturbed." On the application of cure by contraries to the soul, vide supra, p. 98.

⁵¹ *Pafnutius* (Berschin ed.), 236–37.

⁵² *Pafnutius* (Berschin ed.), 237: "Et unde tibi tanta fiducia—ut pollutis labiis praesumas proferre nomen inpollutae divinitatis?" On pollution as a vital construct in Christian concepts of sin, see chapter Two, supra.

musical voice as an instrument for calling to God. And it is perhaps a parallel irony in the penitent's echo of the erotic Thaïs when she says "I will need His mercy not to be overcome in this uncertain struggle," to which Paphnutius responds, "fight like a man, that you may happily obtain victory."⁵³

The chasm between confessor and penitent, here instantiated as prisoner and imprisoned, widens as Thaïs undergoes her sufferings.⁵⁴ Reunited with his disciples, Paphnutius leaves Thaïs for three years, after which he remarks that he does not know whether her penance has been successful or should be considered complete. This lapse in the discretion of the priest to determine the end of penance is fortunately remedied by the vision of a monk, who reports having seen in heaven a beautifully prepared and bright bed, identified by a divine voice as destined for Thaïs the harlot. Having hastened to convey to the filthy and fearful Thaïs the good news, Paphnutius extracts the utterly abject penitent from her cell. Too shamed to entertain hope at first, once advised to do so, it is Thaïs who actually hears, rather than postulates, the music of heaven and creation singing to God: "All angels sing his praise and His kindness, because he never scorns the humility of a contrite heart... Therefore praise Him all the company of Heaven, and on Earth the least little sprout or bush,/ not only all living creatures but even the waterfall's rush,/ because He not only suffers men to live in sinful ways/ but rewards the penitent with the gift of grace."⁵⁵ Scarcely noticing Paphnutius except to command him to his priestly obligation of remaining with her as she dies, Thaïs begins her final prayer of hope. And Paphnutius, the cleric who began the play with a lofty reverie about the mechanics of the heavens, ends knowing his task is the humble one of bending to dig the soft earth so that he may serve by burying

⁵³ *Paphnutius* (Berschin ed.), 238, ll. 4–7: "Thaïs: Opus est eius miseratione ne frangar in dubio certamine—Paphnutius: Certa viriliter—ut possis triumphum obtinere feliciter."

⁵⁴ The erasure of the boundary between a religious penance and the incarceration that demonstrates the power of the governor is made clear by Hrotswitha's choice to have Paphnutius refer to Thaïs as "my prisoner" (*mei captiva*). *Paphnutius* (Berschin ed.), 242, l. 7.

⁵⁵ *Paphnutius* (Wilson trans.), 121. *Paphnutius* (Berschin ed.), 243–44: "Thaïs: Eius pietati laudem ferant omnes angeli—quia non spreuit humilitatem cordis contriti—Paphnutius: Esto stabilis in dei timore.... Thaïs: Unde laudet illum caeli concentus—omnisque terrae surculus—necnon universae animalis species atque confusae aquarum gurgites—quia non solum peccantes patitur—sed etiam paenitentibus praemia gratis largitur."

with respect the body, with its ineffably complex carnal history, of the sinner now in God's embrace.⁵⁶

Conclusion

Hrotswitha's text was a subtle exploration of some of the problematic aspects of a penitentialism that had acquired a judicial cast. "Pafnutius" announced at the outset that violation of Christian standards of decency (in this instance, liberal reception of lovers) could be construed as a public danger. In Carolingian law, scandal (or *fama*) was a sign that an ethical transgression had assumed the proportions that warranted judicial intervention. That intervention might take place in the court of conscience, although in other instances, scandal could bring the accused to a public, episcopal, or royal court, more or less formally constituted, as was seen in the case of Theutberga. Hrotswitha's identification of the rationale for Paphnutius' prosecution of Thaïs as an offense that was public and religious politicises the drama. The vanities for Thaïs' bonfire, which she lit at her departure from Alexandria, were the riches she gained for her celebration of sexual delight, riches bestowed upon her for her warm, though not chaste, reception of her many admirers, who were, as further evidence of her danger to society, at times incited to violence by her charms.

By so defining the crime, Paphnutius draws his own character as a cleric who is assuming, by his own volition, a judicial role. Throughout the play, he applies his clerical education to the correction of his lay penitent, as was prescribed in episcopal instructions for priests. Both his absolute and sole authority and also the secrecy of interactions between confessor and confessant are the frame for Hrotswitha's probe of penitential experience. Paphnutius' interrogation of Thaïs is both surreptitious, in that he conducts it initially while in disguise, and duplicitous, in that he calls for secret circumstances for what he perceives to be a public offense that would, by the Carolingian rule, properly be prosecuted publicly. In the court of conscience, he does

⁵⁶ *Pafnutius* (Berschlin ed.), 244: Pafnutius: Non abeo—non discedo—donec anima super ethra plaudente corpus tradam—sepulturae...et corpus in molli gremio terrae suae materiae pacifice foveatur quoadusque pulverea favilla co-eunte—et vivaci flatu—redivivos artus iterum intrante haec eadem Thaïs resurgat perfecta ut fuit homo—inter candidulas oves collocanda—et in gaudium aeternitatis inducenda..."

not choose the role of an advocate who seeks to intercede for Thaïs before God but, rather, acts as a judge. Acting on his own authority, his judicial assessment is untempered by mercy: he offers her no hope until he is taught by the vision granted to another monk but, rather, he speaks the language of fear (*timor Dei*).⁵⁷ His sentence is for the most extreme asceticism imaginable, to the point of degradation and, it must be remembered, one especially shocking in the context of the social and religious conventions familiar to Hrotswitha's audience.

The question that Hrotswitha handles with great delicacy is whether Paphnutius had either the legal or moral authority so to direct Thaïs's conversion. His status as a confessor—an ordained cleric? a fellow Christian? or, perhaps controversially, a monk?—is masked by Hrotswitha's choice of a well-established narrative firmly located in the setting of the Egyptian deserts, inhabited by the famous pioneers of monasticism and holiness. The ambiguity in Paphnutius' institutional status is entangled with ambiguity in his moral status. The capital sins that corrode the soul are not evident in Hrotswitha's portrayal of Thaïs, but if those qualities are anywhere adumbrated, it is in the character of Paphnutius. In contrast to Thaïs's capacity for humility and love, the part of Paphnutius has hints of vice: his scholarship and scientific understanding suggest pride, his zeal for reform and rigour are close to anger and hatred, his target for conversion provides the suspicion of lust (suggested when he dons a lover's garb), and his apparent insouciance and ignorance of Thaïs's penitential progress might indicate weakness of faith.⁵⁸

That moral ambiguity becomes a foil for the clarity of Thaïs's triumph. Hrotswitha's Thaïs knows God better than Paphnutius and can embrace contrition so fully that her humility wholly overshadows his righteousness. Her abasement is not simply the supine complicity of a victim, but is, through an extraordinary exertion of her will, a voluntary choice. The choice is not made in one moment but is formed through her own meditations during her incarceration: she performs her penance alone, a point emphasised by Paphnutius's abandonment of her. In Thaïs, Hrotswitha found the fruit of an education in the autonomy of the soul that always stands alone in the court of God's judgement,

⁵⁷ On *timor dei* in Carolingian penitential discourse, vide supra, Chapter Four, pp. 190–193.

⁵⁸ It was such a reading that inspired Anatole France to write his *Thaïs*, and that was subsequently drawn even more boldly by Jules Massenet in his opera of the same name.

and her play turned it into a strong affirmation that in penance, power resides with the penitent, not with the confessor. The transformation of Paphnutius from judge to grave-digger is a reminder that the duty of the clergy is to serve; the human failings that tinge his character in Hrotswitha's play serve to affirm that clerics will be answerable for the conditions of their own souls and may not necessarily surpass in virtue their lay charges. By balancing Paphnutius's steely ministry against Thaïs' passionate contrition, Hrotswitha inverts the moral and religious paradigm of penance and, while perhaps not quite pitting God against the confessor, propounds the doctrine that, indeed, only God judges—and may choose to reward rather than punish.

Even as some proponents of Christianised law claimed that the spiritual condition of both the accused and of the polity justified greater institutional authority over the individual and, at the same time, that ecclesiastical judges (and eventually secular ones as well) might enquire not only into deeds but also into thoughts and beliefs, so also did they supply the rationales and language of resistance. The moral authority to judge could not be defined by office or ordination, because scriptural and patristic authorities had established irrefutably that moral authority resided in every Christian soul. Christians were educated in an egalitarian theology that held that sin is original and universal, and from that premise, any Christian, regardless of social, political, or religious status, could gain moral superiority. By enacting in the court of conscience a religious mimesis of judicial process and by assuming the positions of the wounded, the guilty, the prosecuted, and the redeemed in their penitential devotions, Carolingian Christians consolidated some of the deep religious foundations of the precept that all are equal under the law: all know guilt, all are judges of sin, and all long for redemption, whether religious or social.

The hope of redemption opened possibilities both for cooperation and resistance in the implementation of penance. When voluntarily undertaken as a religious devotion, the ritual passage through fear and remorse, controlled and expressed through formally selected humbling acts, to virtue, could resolve both social and spiritual crises. The fear that makes voluntary sacrifice, suffering, and submission to corrective authority acceptable is the fear of our own failures, imperfections, errors, and capacity for crime. Penance could satisfy the desire to be right, whole, well, and innocent. The success of penitential traditions in the West, it becomes clear, was not simply the effect of directives from court and clergy but was part of a symbiosis that required and seemingly

obtained popular participation. When circumstances were such that the juridical and judicial aspects of the system were coercive or abusive, the discourse that created the court of conscience supplied grounds for dissent. Theutberga's appeal to her conscience as a moral authority may have been a quiet form of resistance, but the point that conscience had a primary role was sufficiently powerful that "the bishops' account" includes it in the record of Theutberga's trial.⁵⁹ By recognising the individual soul and conscience, Carolingian penitentialism bequeathed to the persecuted sure belief in the autonomy of the individual and the claims of conscientious objection. The penitent or prisoner, judged by religious or legal standards, is poised to become more right, whole, well, and innocent than the judge, and the knowledge on both sides of that circumstance destabilises the power relationship.

Balancing the regulatory power of bishops and emperor was a persistent confidence in extra-institutional knowledge. In a dynamic and vibrant religious culture, popular belief set many of the terms of faith in its extra-canonical comprehension of celestial mysteries (however surprising, such as the vision of the bed prepared in heaven for Thäis).⁶⁰ The same conviction that personal, as well as popular knowledge, can have religious and moral validity was central to the concept of the court of conscience. While the examination of the soul was designed to excavate guilt, the potential of the internal court to establish innocence, even injury, was always present. That second aspect of conscience, called, ironically, the conviction of one's beliefs, becomes celebrated in western respect for individual will. As the 12th-century Saxon minstrel Dietmar von Aist sang, "*Die Gedanken sind frei*" ("thoughts are free"), and whether sung by peasants in the 15th century or members of the Résistance imprisoned in the camps in the 20th century, that faith in the transcendent value of free will has sustained hope and courage. The liberty and sanctity of conscience result from the idea that the secrets of the heart are known to God alone, and the notion that there are limits to human powers of invasion, excavation, and coercion stems from it. Carolingian penitential discourse developed the doctrinal precepts that, indeed, it is the freedom of the will and the quality of thoughts which comprise the measure of the human being, and those precepts had all

⁵⁹ Vide supra, pp. 22, 35. On the court of conscience as elaborated by Carolingian authors, especially Alcuin, see Firey, "Blushing before the Judge," 173–200.

⁶⁰ On extra-canonical traditions and popular piety, vide supra, Chapter Three, pp. 140–156.

the more political, social, and religious value because they could become enshrined in law and become the pillars of justice. There is embedded in western discourse the belief that those who wrong others, especially those who wrong the meek, will have to be contrite in order to obtain redemption. In contrition and penitential suffering, Carolingians found both a catharsis and a hope, which they encapsulated in the phrase, "For God doth not despise a contrite heart."

APPENDIX A

PENITENTIAL CANONS PERTAINING TO DIETARY POLLUTION

This selection of canons from various penitentials printed by F.W.H. Wasserschleben relates to the discussion in Chapter Two of the written rules describing ritual pollution. The footnotes given here demonstrate the replication of these canons across the corpus of penitentials: that is, the similarities in their content and often in their textual representations demonstrate that they are not unique to a particular collection. It can thus be suggested that the compilers of the various penitentials drew from a common and widely available corpus of such canons. Differences in the readings are indicated within square brackets in the footnotes, with an abbreviated reference to the particular penitential as designated by Wasserschleben. This tabulation is intended only to indicate that such collation of the texts from the manuscripts of all Carolingian penitentials may prove very fruitful and that particular penitentials should not be treated in isolation from others. Some of the translations here draw upon John T. McNeill and Helena M. Gamer, *Medieval Handbooks of Penance: a translation of the principal Libri Poenitentiales*. Records of Western Civilization (New York: Columbia University Press, 1938).

Dead things given to pigs, use of dead things

Greeks do not give carrion meat to their pigs; moreover, the hides are used for footwear, and both the hair and horns may be taken, but not for any sacred object.¹

¹ “Graeci carnem morticinam non dant porcis suis, pelles autem eorum ad calciamentum [Can. Greg. calciamenta utuntur], et lana et cornua licent accipi [Can. Greg. accipere liceant], sed non in sanctum aliquid.” Cap. Dach. (Hermann [F.W.H.] Wasserschleben, *Die Bußordnungen der abendländischen Kirche* [Graz: Akademische Druck- u. Verlagsanstalt, 1851; repr. 1958], p. 147); Can. Greg. (Wasserschleben, p. 175). Appears to be in Bodleian MS of the Confessionale Ps.-Egbert, (Wasserschleben, p. 317).

Animals eaten by wolves or dogs; harts and goats found dead

Animals which have been eaten [or torn] by wolves or by dogs are not to be eaten, except by pigs and dogs; neither hart nor goat, if they are found dead, unless by chance they were alive until killed by a man, but they are to be given to pigs and dogs.²

If there is a man who has struck a wild beast with an arrow and therefore chases it and it is found dead after the third day and there a dog or a wolf or a vulture or a bear or whatever sort of other wild thing has been busy with it, let the man who is Christian not taste it.³

If a wolf should have torn a herd animal of any type, and hence it be dead, let not the man who is Christian taste it: if, moreover, he should do so, let him fast for four weeks on bread and water; if it lives and afterward is killed, then it may be eaten without offense.⁴

If a deer or goat are found dead, they are not to be eaten by men.⁵

Pigs which have tasted blood, bloodthirsty hens

Pigs which have touched things tasting blood may be eaten.⁶ If, however, pigs eat things that have torn the corpses of dead things, it is not

² "Animalia, quae a lupis vel [Can. Greg. seu a] canibus consummantur [Theod. lacerantur], non sunt comedenda [Can. Greg. hominibus] nisi porcis et canibus [Can. Greg. om. nec cervus aut caprus, si mortui inventi sunt; Theod. nec cervus nec capra, si mortui inventi fuerint, nisi forte ab homine adhuc viva occiduntur, sed porcis et canibus dentur]." Can. Dach. (Wasserschleben, p. 147); Can. Greg. (Wasserschleben, p. 175); Theod. (Wasserschleben, pp. 211–12). Appears to be in Bodl. MS of Conf. Ps.-Egbert (Wasserschleben, p. 317).

³ "Si homo quis sagitta percusserit feram, et ea tamen aufugerit, et post tertium diem mortua inventa fuerit, et ibi canis, vel lupus, vel vulpes, vel ursus, vel alia cuiuslibet generis fera eam occupaverit, ne gustet eam homo quis Christianus." Poen. Ps.-Egbert (Wasserschleben, p. 337).

⁴ "Si lupus alicuius generis pecus laceraverit, et illud inde mortuum sit, ne gustet id homo quis Christianus; si autem quis id fecerit, iv hebdomadas in pane et aqua jejuset; si vivat et postea occisum fuerit, tunc cum venia comedatur." Poen. Ps.-Egbert (Wasserschleben, p. 337).

⁵ "Si cervus aut caprus mortui sunt inventi, non sunt comedenda hominibus." Can. Greg. (Wasserschleben, p. 176).

⁶ "[Theod. om. Porci qui sanguinem gustantes tetigerint, manducantur]. Si vero porci [Cap. Dach., Theod. Sed qui] cadavera mortuorum lacerantes manducant, [Cap. Dach., Theod. carnem eorum manducare non licet] [Theod. om. comedere porcos non licebit], usque dum macerantur [Cap. Dach. om. et post circulum anni]." Cap. Dach. (Wasserschleben, p. 147). Can. Greg. (Wasserschleben, p. 175). Theod. (Wasserschleben, p. 212).

permitted to eat their meat, until they are marinated [?] and after the passage of a year.⁷ If pigs eat the flesh of carrion or have tasted human blood, we do not believe they are to be cast away, even if it is not yet permitted to eat them, until they are clean. If a hen has drunk human blood, after three months it is permitted to eat it; although admittedly we do not have established testimony on this point.⁸ However if in the case that pigs ate the flesh of carrion or the blood of a man we believe they are not to be thrown out, then neither should be hens.⁹

If a pig or a hen or whatever type of animal has eaten of the body of a man or has drunk his blood, let the animal be killed and given to the dogs.¹⁰

Animals contaminated by human intercourse

Animals polluted by the coitus of men are killed, their flesh thrown to the dogs (but their horns are used, and what is borne of them may be taken for use and coverings); where there is doubt, they are not killed.¹¹

⁷ "Porci qui sanguinem gustantes tetigerint, manducentur. Sed qui cadavera mortuorum lacerantes manducent, carnes eorum non licet comedere, usque quo macerentur." Cap. Dach. (Wasserschleben, p. 147).

⁸ Conf. Ps.-Egbert. "Si porci carnem morticinam ederint vel sanguinem humanum gustaverint, non abjiciendos esse credimus, tametsi nondum licebit eos comedere, donec mundi sint. Si gallina sanguinem humanum biberit, post tres menses licebit eam comedere; verumtamen de hoc non habemus vetus testimonium." (Wasserschleben, p. 317. Cf. Wasserschleben's notes on Bodleian MSS readings, p. 317.)

⁹ Cap. Dach. "Tamen si casu porci comederint [Can. Greg. comedent porci; Theod. Si casu porci comedant] carnem morticinorum aut sanguinem hominis [Can. Greg. hominum], non adjiciendo [Can. Greg. abiciendos, Theod. habiciendos] credimus, nec gallinas [Can. Greg. om. equali modo] [Theod. ergo porci qui sanguinem hominis gustant manducentur]." Cap. Dach. (Wasserschleben, p. 147). Can. Greg. (Wasserschleben, p. 175). Theod. (Wasserschleben, p. 212).

¹⁰ "Si porcus, vel gallina vel cuiusque generis animal de corpore hominis ederit, vel sanguinem eius biberit, occidatur animal, et detur canibus." Poen. Ps.-Egbert (Wasserschleben, p. 340).

¹¹ "Animalia coitu hominum polluta [Cap. Dach. coitu hominibus commixta occiduntur] occiduntur, carnes canibus proiciuntur, [Cap. Dach. om. sed cornua utuntur] [Theod. sed quod generant sit in usu et coria adsumantur]; ubi dubium sit, non occiduntur." Cap. Dach. (Wasserschleben, p. 150). Can. Greg. (Wasserschleben, pp. 175–176). Theod. (Wasserschleben, p. 212).

Wounded meat

If it be licit to eat flesh wounded and tasted by beasts? He answered: if a man kills a living animal first; if, however, it was dead, then all the flesh should be cast outside.¹²

Murderous bees

If bees should kill a man, the bees should be killed quickly and their honey, nevertheless, may be eaten;¹³ they should be killed before they return to their honey, that is, immediately, so that they do not rest there for a night, and the honey which they made may be eaten.¹⁴

Fish, a different kettle

Fish, moreover, are permitted as food, even if they are found dead, because they are of a different nature.¹⁵

If someone finds a dead fish in a pool and eats it, let him fast for four weeks on Wednesdays and Fridays on bread and water, and on the other days let him abstain from meat; but if a fish is found dead in a stream, it may be eaten.¹⁶

¹² "Si licitum est, carnem vulneratam a bestiis et gustatum comedere? respondit: si homo vivum animal prius occidit; si vero mortuus fuerit, deiciatur foras omnem carnem." Can. Greg. (Wasserschleben, p. 176).

¹³ "Si apes occidant [Theod. Apes si occidunt] hominem, occidere [Theod. ipsi quoque occidi] debent apes festinanter et mel tamen manducetur." Can. Greg. (Wasserschleben, p. 176). Theod. (Wasserschleben, p. 212).

¹⁴ Conf. Ps.-Egbert. "Apes si occiderint hominem, statim occidantur; antequam ad mel perveniant, ita saltem, ut non per noctem ibi restent, et mel, quod fecerint, comedatur." Ps.-Egbert (Wasserschleben, p. 316).

¹⁵ "Pisces autem [Can. Greg. vero] licent [Can. Greg. licet][Conf. Ps.-Egbert Pisces licet comedere, quamvis mortui inveniuntur], quia alterius naturae sunt." Can. Dach. (Wasserschleben, p. 147). Can. Greg. (Wasserschleben, p. 176). Theod. (Wasserschleben, p. 212). Ps.-Egbert (Wasserschleben, p. 315).

¹⁶ "Si quis piscem mortuum in piscina invenerit, et eum ederit, iv hebdomadas, diebus Mercurii et Veneris in pane et aqua, jejundet, et aliis diebus a carne se abstineat; at si in flumine piscis mortuus inventus sit, edatur Poen." Ps.-Egbert (Wasserschleben, p. 337).

Horsemeat

Horse is not prohibited, although it is the custom not to eat it, and many peoples do not wish to eat it.¹⁷

Those who eat unclean meat or carrion

Let him who eats unclean or carrion flesh ravaged by beasts do penance for 40 days. If, however, he was driven by the necessity of hunger, this is a much lighter matter, indeed, of no harm; because one thing may become another, lawful thing, when necessity compels it.¹⁸ Let him who eats meat that is unclean or consumed by a fox do penance for 40 days.¹⁹ Those who have eaten unclean flesh and the oils which were cooked with the flesh should cease from ministry.²⁰

Those who ate it unwittingly

Let him who eats carrion not knowing it is the case do penance for 40 days; if he knew it, 100 days. Let him who eats or drinks something damaged and he is unaware and is destitute, seven days, if, however, he knows, 40 days, but for those who are infirm, if they know, 15 days. For those who frequently commit the offense, one year or three Lents;

¹⁷ "Equum non prohibent, tamen consuetudo est non comedere." Cap. Dach. (Wasserschleben, p. 147). Can. Greg. (Wasserschleben, p. 176). Theod. (Wasserschleben, p. 212). "Caro equina non est prohibita, etsi multae gentes eam comedere nolunt." Conf. Ps.-Egbert (Wasserschleben, pp. 315-16).

¹⁸ "Qui manducat carnem immundum aut morticinam [Ps. Bede. aut] dilaceratam [MSS also morticina dilacerata] a bestiis, xl dies poeniteat. Si enim necessitas cogit famis [MSS cogit, nihil est] [Ps. Bede. Si per necessitatem fame cogente, multo levius est penitential], [Bede. multo levius est] [Bede om. non nocet, quoniam aliud est legitimum aliud quod necessitas cogit]." Theod. (Wasserschleben, p. 191). Bede (Wasserschleben, p. 227). Ps.-Bede (Wasserschleben, p. 269). "Qui immundum animal pro necessitate comederit, nihil nocet." Conf. Ps.-Egbert (Wasserschleben, p. 316). "Qui manducat morticinum, xl diebus jejundet, si eius necessitas egerit, nihil est." Cap. Dach. (Wasserschleben, p. 156). "Si quis sanguinem vel carnem morticinam ederit, et id ex necessitate non fecerit, xii hebdomadas secundo semper die in pane et aqua jejundet." Poen. Ps.-Egbert (Wasserschleben, p. 336).

¹⁹ "Qui manducat carnem immundam aut a vulpe consumpta, xl dies peniteat." Can. Greg. (Wasserschleben, p. 176).

²⁰ "Qui carnes immundas manducaverint et olera quae cum carnes coquantur, cessare debent a ministerio." Cap. Dach. (Wasserschleben, p. 158).

for him who eats or drinks something contaminated by a domestic animal, that is, by a dog or a cat, and he knows it, let him sing 100 psalms for himself or let him fast for two days; if he is unaware, let him sing 50 psalms or let him do penance for one day. If someone should have given any liquid to another in which there is a dead mouse or weasel, if they are of secular status, let them do penance for seven days; if they are in a monastery, however, let them sing 200 psalms. Let him who learns afterward the nature of the thing he drank sing a psalter; if he knew at the time, however, let him do penance for seven days. If anyone unknowingly eats a half-cooked thing, let him do penance for three days or sing the psalter; let one who eats it knowingly do penance for seven days.²¹

If someone shall eat a blood-stained thing in half-cooked food, if he be aware of it, let him fast for seven days; if he be unaware, let him fast for three days or sing the psalter.²²

Let him who shall eat something of that which a dog or mouse has eaten, or which a weasel has defiled, and he knows it, sing 100 psalms; if he did not know, let him sing 50. Let him who would give liquid in which a mouse or a weasel has been submerged, if he be a secular man, fast for three days; if he be a monastic, let him sing 300 psalms; if he did not know it beforehand and became aware afterward, let him sing the psalter.²³

²¹ "Qui comedit morticinam causam inscius, xl dies peniteat, qui scit, c dies. Qui fraudem comedit et nescit et est inops vel bibit, vii dies, si autem scit, xl dies, infirmi vero, si sciunt, xv dies. Qui fraudem faciunt saepe, i annum vel iii quadragesimas, qui comedit vel bibit intinctum a familiari bestia, id est a cane vel catto et scit, c psalmos cantet pro se vel ii dies jejunit, si nescit, l psalmos cantet aut unum diem peniteat. Si quis dederit alicui liquorem aliquem, in mus vel mustela mortua est, si seculares sunt, vii dies peniteant, si autem in coenobio sunt, cc psalmos cantent. Qui postea noverit, quod tale potum biberit, psalterium cantet, sciens autem vii dies peniteat. Si quis semicoctum comederit inscius, iii dies peniteat, vel psalterium cantet, sciens autem vii dies peniteat." Ps.-Bede (Wasserschleben, pp. 269–70).

²² "Si quis cruentem quid comederit in semicocto cibo, si sciat, vii dies jejundet, si nesciverit, iii dies jejundet, vel psalterium cantet." Conf. Ps.-Egbert (Wasserschleben, p. 317).

²³ "Qui comederit aliquid de eo, quod canis vel mus comederit, vel quod mustela inquinaverit, et scit, centum psalmos cantet; si nesciat, l cantet. Qui alteri dederit liquorem in quo mus vel mustela fuerint submersi, si secularis homo sit, iii dies jejundet; si monasticus sit, trecentos psalmos cantet; si antea nesciverit et postea sciat, psalterium cantet." Conf. Ps.-Egbert (Wasserschleben, p. 317).

He who eats something polluted by blood or some uncleanness, if he be unaware, it is nothing, but if he knows, he should do penance according to the form of the pollution.²⁴

Food touched by unclean animals or an unclean hand

If, in the case that someone touches food with an unclean hand or a dog or a cat, a mouse or an unclean animal that eats blood, there is no harm, and it does not harm one who by necessity eats an animal or bird or beast that seems unclean.²⁵

If anyone should have moistened his hand in any food and his hand is not clean, let him be cleansed with 100 hand-slaps [or psalms?].²⁶

Strangled things

Birds and other animals, if they are strangled in snares, are not to be eaten; similarly those which are dead from a falcon, because in the fourth chapter of the Acts of the Apostles it says, "Likewise abstain from what has been sacrificed to idols and from blood and from what is strangled" [Acts 15:29].²⁷

²⁴ "Quod sanguine vel quocunque immundo polluitur, si nescit, qui manducat, nihil est, si autem scit, poeniteat iuxta modum pollutionis." Theod. (Wasserschleben, p. 192).

²⁵ "Si casu quis immunda manu cibum tangit vel canis vel pilax, mus aut animal immundum quod sanguinem edit, nihil nocet, et qui pro necessitate manducat animal quod immundum videtur vel avem vel bestiam non nocet." Theod. (Wasserschleben, p. 192). "Si quis immundis manibus cibum aliquem tetigerit, vel canis vel felis vel mus tetigerit, aut aliquid quodcunque animal immundum, Theodorus dixit, quod ei nihil noceret." Conf. Ps.-Egbert (Wasserschleben, p. 316).

²⁶ "Si quis tinxerit in aliquo cibo manum et non est idonea manus c palmatas [sic] emundetur." Ps.-Bede (Wasserschleben, p. 273). It seems possible that "palmatas" is a scribal corruption of the more usual penance of "psalmos".

²⁷ "Aves [Can. Greg. Apes] [Theod. ad. vero] et animalia cetera si [Conf. Ps.-Egbert quae] in retibus strangulentur [Conf. Ps.-Egbert strangulantur], non sunt comedenda [Theod. hominibus], similiter ab accipiter mortua [Theod. nec si accipiter oppresserit si mortua inveniuntur, quia iv capitula actuum apostolorum...] [Conf. Ps.-Egbert neque etiamsi accipiter ea momorderit, si mortua inveniuntur, sunt postea comedenda, quia in actibus Apostolorum ita praecipitur...]. Apostolus etiam ait: Similiter abstinete vos a suffocato sanguine et ab idolatria. [Can. Greg. quia in IV capitula actuum apostolorum ita praeciperunt, id est, abstinere se a fornicatione et suffocatione et sanguine et idolatrie.]" Cap. Dach. (Wasserschleben, p. 160). Can. Greg. (Wasserschleben, p. 176). Theod. (Wasserschleben, p. 212). Conf. Ps.-Egbert (Wasserschleben, p. 316).

If any wild beast be strangled in a snare, it is permitted to no man to eat it; if anyone should eat it, let him fast for four weeks, always on bread and water on the second day.²⁸

Rabbit

It is permitted to eat rabbit, and it is good against dysentery and diarrhoea, soaked in water, and its gall mixed with pepper is good against sorrow.²⁹

Mouse in the soup (or beer)

If a mouse should fall into the beer (or liquid), let him be taken thence and sprinkled with holy water, and the beer blessed and used; if he be dead, all the liquid should be cast away and not taken by men, whether it be milk or beer or anything of whatever sort; all the liquid should be thrown outside and the vessel cleaned.³⁰

If a piglet should fall into liquid, and is extracted alive, let the liquid be sprinkled with holy water and suffused with incense, and the liquid may be taken; if he was dead, and the liquid cannot be given, let it be poured away.³¹

²⁸ "Si fera aliqua in rete strangulata sit, nulli est homini permissum eam edere; si quis eam ederit, iv hebdomadas, secundo semper die in pane et aqua, jejunet." Poen. Ps.-Egbert (Wasserschleben, p. 337).

²⁹ "Leporem licet comedere et est bonum pro senteria [disinteria, MS c of Can. Greg.; desinteria Theod.; Ps.-Egbert contra dysenteriam et diarrhoeam, in aqua elixus], et fel eius miscendum pipro [Theod. pipere; Conf. Ps.-Egbert cum pipere] pro dolore [Can. Greg., Theod. om. jecores; Conf. Ps.-Egbert contra dolorem oris]." Cap. Dach. (Wasserschleben, p. 160). Can. Greg. (Wasserschleben, p. 176). Theod. (Wasserschleben, p. 212). Conf. Ps.-Egbert (Wasserschleben, p. 316).

³⁰ "Surrex si [Bede. si mus] [Ps.-Bede. Mus si] ceciderit in cervisa [Theod., Bede., Ps.-Bede liquorem], tollatur inde et spargitur [Bede aspargatur ille] aqua sancta [Bede benedicta et utatur; Ps.-Bede benedicta et sumatur] [Theod. et sumatur si vivens sit]; si mortua fuerit [Bede. si mortua sit abieciatur totus ille liquor nec ab hominibus sumatur. om. rel.] [Ps.-Bede si vero mortua fuerit inventa abieciatur totus ille liquor, nec sumatur ab hominibus sive lac sive cervisa vel aliquid huiusmodi], [Ps.-Bede om. omnem morem [Theod. omnis liquor] proiciatur foras [Theod. nec homini detur] et mundatur [Theod. mundetur] vas]." Can. Greg. (Wasserschleben p. 176). Theod. (Wasserschleben p. 192). Bede (Wasserschleben p. 227). Ps.-Bede (Wasserschleben p. 273).

³¹ "Si porcellus ceciderit in liquorem, et vivus sit extractus, spargatur liquor ille aquae benedicta, et sufficiatur thure, et liquor sumatur; si mortuus est, et liquor dari nequeat, effundatur." Conf. Ps.-Egbert (Wasserschleben, p. 316).

If an animal of whatever type shall have fallen into the well, and it has been found there dead, let the well be purged, and let holy water be sprinkled into it. And if anyone should taste the water before the well is expiated, let him fast for one week on bread and water; if he was unaware, let him fast for one day on bread and water.³²

If there was much soup

Likewise elsewhere. If that liquid be significant in quantity in which the immersed mouse or weasel died, let it be purged and sprinkled with holy water and taken if there be necessity.³³

Mice found in other food

If in the flour or in other food or in porridge or in coagulated milk a mouse or dead weasel be discovered, that in which they fell or whatever is in the portion around them is cast outside so that the rest may be eaten.³⁴

He who has eaten anything of that which a dog or mouse or weasel has defiled, or who has eaten of it and knows, should sing 100 psalms; if he does not know, let him sing 50 psalms.³⁵

³² "Si cuiuscumque generis animal in puteum ceciderit, et ibi mortuum inventum fuerit, purgetur puteus, et spargatur in eum aqua benedicta. Et si quis aquam gustaverit, antequam puteus expiatus sit, hebdomadam unam jejundet in pane et aqua; si nesciens, unum diem in pane et aqua jejundet." Poen. Ps.-Egbert (Wasserschleben, p. 340).

³³ "Item alias. Si [Bede, Ps.-Bede. Quodsi] multus sit cibus ille liquidus [Bede. multus fuerit liquor ille; Ps. Bede multum est de liquore illo] in quo mus mustelave [Ps.-Bede om.] immersa [Bede incidens] moritur [Ps. Bede ceciderit et ibi moritur], purgetur [Ps.-Bede purgetur liquor ille] et aspargatur aqua sancta et sumatur si necessitas sit." Theod. (Wasserschleben, p. 192). Bede. (Wasserschleben, p. 227). Ps.-Bede (Wasserschleben, p. 273). "Si in multum aliquem liquorem mus vel mustela inciderit, et ibi mortuus sit, aspergatur aqua benedicta, et sumatur." Conf. Ps.-Egbert (Wasserschleben, p. 316).

³⁴ "Si in farina aut in aliquo cibo aut in pulte vel in lacte coagulato mus vel mustela mortua inveniantur in quo iacent vel quodcumque in circuitu earum est prociatur foras quod residuum fuerit manducetur." Ps.-Bede (Wasserschleben, pp. 273-74).

³⁵ "Qui aliquid de eo ederit, quod canis, vel mus, vel mustela inquinaverit, vel de quo ederit et scit, c psalmos cantet; si nesciat, l psalmos cantet." Poen. Ps.-Egbert (Wasserschleben, p. 338).

If a mouse has eaten the Eucharist because of the negligence of him who was supposed to guard it, let him [the guardian] fast for 40 days.³⁶

Bird-dung found in soup

If birds drop dung into liquid or food, let the dung be removed from it and let it be sanctified with water and the food will be clean.³⁷

If the dung of birds has fallen into liquid, let the liquid be taken and sprinkled with blessed water, then the food will be clean, for one polluted by blood or any unclean thing, if he eats it and did not know it, it is not harmful to him; if however he knew, let him correct the matter according to the degree of pollution.³⁸

The needs of the infirm

It is permissible for the infirm to take by mouth all food and drink whenever they wish.³⁹

If someone on account of his infirmity or weakness is unable to bear the fasting or austerity which his confessor had prescribed for him, it should be permitted to him to redeem his fasting with piety and his worldly goods, that is, therefore, if he be wealthy, for each fast of 12 months let him give 30 solidos, that is, in our speech, 30 scillinga; if, however, this be not within his power, then let him give 20 solidos; if that is not within his power, let him give ten solidos. If he is quite

³⁶ "Si mus eucharistiam ederit ex incuria eius qui illam conservare deberet, xl dies jejundet." Poen. Ps.-Egbert (Wasserschleben, p. 339).

³⁷ "Si aves stercorant in [Ps.-Bede om. quemcunque] liquorem [Bede. huiusmodi; Ps. Bede huiusmodi vel cibum], tollatur ab eo stercus et sanctificetur [Bede, Ps.-Bede. mundetur] aqua et mundus erit cibus [Bede. aqua sancta et sumatur] [Ps.-Bede mundetur liquor vel cibus aqua benedicta et sumatur]." Theod. (Wasserschleben, p. 192). Bede (Wasserschleben, p. 227). Ps.-Bede (Wasserschleben, p. 273).

³⁸ "Si avium stercus in liquorem ceciderit, tollatur et aspergatur (liquor) aqua benedicta, tunc cibus mundus erit, nam qui sanguine vel re alia immunda pollutus fuerit, si comederit et non noverit, non nocet ei; si autem noverit, juxta pollutionis gradum emendet." Poen. Ps.-Egbert (Wasserschleben, p. 346).

³⁹ "Infirmis omni ora licitum est, cibum et potum sumere quandoque desiderant." Can. Greg. (Wasserschleben, p. 176). "Infirmo licet quavis hora cibum sumere, et quandoque desiderat." Conf. Ps.-Egbert (Wasserschleben, p. 316).

indigent and does not have ten solidos for the giving, let him give three solidos, for it is easier for a rich man to give 30 than for a pauper to give three. A legitimate solidus is always 12 denarii. There are three modes in which alms of this sort may be offered: one is to leave them upon the altar of God, another is to redeem a man from servitude, that he may thereafter be free, a third is to distribute them to God's poor.⁴⁰

Other

All the following are from the "Canones Hibernenses" (Wasserschleben, pp. 137–38).

The penance for drinking blood or urine is seven and a half years on bread and water, and the imposition of the bishop's hands afterward.⁴¹

The penance for eating horsemeat is four years on bread and water.⁴²

The penance for eating meat on which dogs have feasted is 40 days on bread and water.⁴³

The penance for eating the meat from carrion of the flock is 42 days on bread and water.⁴⁴

The penance for illicit drinking of [what has been touched] by a dog is one year.⁴⁵

⁴⁰ "Si quis prae infirmitate sua vel mollitie jejunium vel austeritatem perferre nequeat, quam confessoris eius ei praescripserit, ei permissum erit jejunium suum redimere pietate et mundanis suis possessionibus, id est ergo, si dives sit, pro xii mensium jejunio det xxx solidos, id est, in sermone nostro, xxx scillinga; si tantum facultatis ei non suppetat, tunc xx solidos det, si autem tantum facultatis ei non suppetat, x solidos det; si denique indigens homo sit, ut x (dandi) facultatem non habeat, iii solidos det, quia dives potest facilius xxx solidos dare, quam pauper iii. Legitimus solidus semper est xii denariorum. Huiusmodi eleemosynae tribus modis erogandae sunt: unus est, ut super Dei altare deponantur, alter, ut homo ex servitute redimatur, et deinde liberetur, tertius, ut Dei egenis distribuantur." Poen. Ps.-Egbert (Wasserschleben, p. 341).

⁴¹ "Poenitentia de bibitione sanguinis vel urine vii anni et semis in pane et aqua et impositione manus episcopi post ea.

⁴² Poenitentia essus carnis equi iiii anni in pane et aqua.

⁴³ Poenitentia essus carnis quam canes comederunt xl dies in pane et aqua.

⁴⁴ Poenitentia essus carnis morticinione pecoris xlii in pane et aqua.

⁴⁵ Poenitentia illiciti bibitionis [Bigot. MS quod intinxit] canis annus unus.

The penance for drinking [what has been touched] by an eagle or a crow or a blackbird or a rooster or a hen is 50 days on bread and water.⁴⁶

The penance for drinking illicitly what has been touched by a cat is five days on bread and water.⁴⁷

The penance for drinking illicitly what has been touched by a carcass from the flock is 40 days on bread and water.⁴⁸

The penance for illicitly drinking what has been touched by the corpse of a mouse is seven days on bread and water.⁴⁹

The penance for drinking illicitly what has been touched by a layman or laywoman is 50 days on bread and water.⁵⁰

The penance for drinking illicitly what has been touched by a pregnant servant or her consort is 40 days on bread and water.⁵¹

⁴⁶ Poenitentia bibitionis aquile vel curbi vel graule vel galli et galline l dies in pane et aqua.

⁴⁷ Poenitentia bibitionis illicite muricis v dies in pane et aqua et superpositio.

⁴⁸ Poenitentia illicite bibitionis de morticina pecoris xl dies et noctes in pane et aqua.

⁴⁹ Poenitentia illicite bibitionis morticine muris vii dies in pane et aqua.

⁵⁰ Poenitentia bibitionis illicite laici vel laicae l dies in pane et aqua.

⁵¹ Poenitentia bibitionis illicite glantelle prignantis vel cohibitoris sui xl dies in pane et aqua. See John Thomas McNeill and Helena M. Gamer, *Medieval Handbooks of Penance* (New York: Columbia University Press, 1938), 121. for a note on the philological oddity of this canon.

BIBLIOGRAPHY

- For editions of canon law collections and penitentials, see [Collectio...] and [Penitentials].
- Adelson, Howard, and Robert Baker. "The Oath of Purgation of Pope Leo III in 800." *Traditio* 8 (1952): 35–80.
- Agobardus Lugdunensis. *Opera Omnia*. Edited by L. Van Acker. Corpus Christianorum, Continuatio Mediaevalis 52. Turnhout: Brepols, 1981.
- Airlie, Stuart. "Private Bodies and the Body Politic in the Divorce Case of Lothar II." *Past and Present* 161 (1998): 3–38.
- Alberi, Mary. *Charlemagne's Court Poets and Imperialism*. Ph.D. dissertation, State University of New York at Binghamton, 1980.
- . "The Evolution of Alcuin's Concept of the *Imperium christianum*." In *The Community, the Family and the Saint: Patterns of Power in Early Medieval Europe. Selected Proceedings of the International Medieval Congress, University of Leeds, 4–7 July 1994, 10–13 July 1995*, edited by Joyce Hill and Mary Swan. 3–17. Turnhout: Brepols, 1998.
- Albert, Bat-Sheva. "Adversus Iudaeos in the Carolingian Empire." In *Contra Iudaeos: Ancient and Medieval Polemics Between Christians and Jews*, edited by Ora Limor and Guy G. Stroumsa. Texts and Studies in Medieval and Early Modern Judaism, vol. 10, 119–42. Tübingen: J.C.B. Mohr (Paul Siebeck), 1996.
- Alcuin. *Commentaria [Expositio] in sancti Iohannis evangelium*. In PL 100, cols. 737–1008.
- . "De virtutibus et vitiis." In PL 101, cols. 613–38.
- . "Confessio peccatorum pura (Feria II)." In *Officia per Ferias*. In PL 101, cols. 524–26.
- . "Enchiridion (seu Expositio) in Psalmos poenitenciales (Ps. 31)." In PL 100, cols. 570–96.
- . "Epistolae 17, 131, 138, 241." Edited by Ernst Dümmler. Monumenta Germaniae Historica, Epistolae, IV (Karolini Aevi II), 193–98. Berlin: Weidmannos, 1895.
- Alphandery, P. "De quelques faits de prophétisme dans des sectes latines antérieures au Joachimisme." *Revue de l'Histoire des Religions* 26 (1905): 177–218.
- Ambrosius Autpertus. *Ambrosii Autperti Opera*. Edited by Robert Weber, O.S.B., Corpus Christianorum, Continuatio Mediaevalis. Turnholt: Brepols, 1975.
- Amulo Lugdunensis. "Liber contra Iudaeos." In PL 116, cols. 141–84.
- Angelomus of Luxeuil. *Enarrationes in libros Regum*. In PL 115, cols. 243–552.
- Angenendt, Arnold. "Libelli bene correcti. Der 'richtige Kult' als ein Motiv der karolingischen Reform." In *Das Buch als magisches und als Repräsentationsobjekt*, edited by Peter Ganz. 117–35. Wiesbaden: Otto Harrassowitz, 1992.
- . *Monachi peregrini: Studien zu Pirmin und den monastischen Vorstellungen des frühen Mittelalters*. Münstersche Mittelalter-Schriften. Munich: W. Fink, 1972.
- Annales Bertiniani*. Edited by Georg Waitz. Monumenta Germaniae Historica, Scriptores I. Hanover: Hahnsche Buchhandlung, 1883.
- The Annals of St. Bertin*. Translated by Janet L. Nelson. Manchester Medieval Sources Series. Vol. 1. Ninth-century Histories. Manchester: Manchester University Press, 1991.
- Anton, Hans Hubert. *Fürstenspiegel und Herrscherethos in der Karolingerzeit*. Bonn: L. Röhrscheid, 1968.

- The Apocryphal New Testament: A Collection of Apocryphal Christian Literature in an English Translation.* Edited and translated by J.K. Elliott and M.R. James. Oxford and New York: Clarendon Press and Oxford University Press, 1993.
- Augustinus Hipponensis. In *evangelium Iohannis tractatus CXXIV*. Edited by Radbodus Willems. Corpus Christianorum, Series Latina, 36. Turnhout: Brepols, 1954.
- . "Epistola 173." In PL 33, cols. 754–57.
- Autenrieth, Johanne, and Raymund Kottje. *Kirchenrechtliche Texte im Bodenseegebiet: Mittelalterliche Überlieferung in Konstanz, auf der Reichenau und in St. Gallen*. Sigmaringen: J. Thorbecke, 1975.
- Bachrach, David. "Confession in the *Regnum Francorum* (742–900): The Sources Revisited." *Journal of Ecclesiastical History* 54 (2003): 3–22.
- Ballerini, Pietro and Girolamo. *De antiquis tum editis, tum ineditis collectionibus et collectoribus canonum ad Gratianum usque tractatus in quatuor partes distributus*, in *Appendix ad sancti Leonis Magni opera III* (1757). Repr. in PL 56, cols. 11–354.
- Banniard, Michel. "Théorie et pratique de la langue et du style chez Alcuin: Rusticité feinte et rusticité masquée." *Francia* 13 (1985): 579–601.
- . "Vrais aveux et fausses confessions du IX^e au XI^e siècle: Vers une écriture autobiographique?" In *L'Aveu: Antiquité et moyen-âge. Actes de la table ronde organisée par l'École française de Rome avec le concours du CNRS et de l'Université de Trieste, Rome 28–30 mars 1984*, 215–41. Rome: École française de Rome, 1986.
- Barbero, Alessandro. *Charlemagne, Father of a Continent*. Translated by Allan Cameron. Berkeley, Los Angeles, London: University of California Press, 2004.
- Barnwell, P.S. "Einhard, Louis the Pious and Childeric III." *Historical Research* 78 (2005): 129–39.
- Barré, H. *Les homéliaires carolingiens de l'école d'Auxerre: Authenticité, tableaux comparatifs, initia*. Studi e Testi, 225. Vatican City: Biblioteca Apostolica Vaticana, 1962.
- Barrow, Julia. "Chrodegang, His Rule and Its Successors." *Early Medieval Europe* 14 (2006): 200–12.
- Barthélemy, Dominique. "Présence de l'aveu dans le déroulement des ordalies (IX^e–XIII^e siècle)." In *L'Aveu: Antiquité et moyen-âge. Actes de la table ronde organisée par l'École française de Rome avec le concours du CNRS et de l'Université de Trieste, Rome 28–30 mars 1984*, 191–214. Rome: École française de Rome, 1986.
- . "Diversité des ordalies médiévales." *Revue historique* 280 (1988): 3–25.
- Bartlett, Robert. *Trial by Fire and Water: The Medieval Judicial Ordeal*. Oxford [Oxfordshire] and New York: Clarendon Press and Oxford University Press, 1986.
- Batany, Jean. "Le vocabulaire des fonctions sociales et ecclésiastiques chez Grégoire le Grand." In *Grégoire le Grand. Colloques internationaux du Centre National de la Recherche Scientifique, Chantilly, 15–19 September 1982*, edited by Jacques Fontaine, Robert Gillet, and Stan Pellestrandi. 171–80. Paris, 1986.
- Bauer, Dieter R., Nicola Becker, Eva Hamer, and Josef Semmler, eds. *Mönchtum, Kirche, Herrschaft, 750–1000*. Sigmaringen: J. Thorbecke, 1998.
- Becher, Matthias. *Eid und Herrschaft: Untersuchungen zum Herrscherethos Karls des Grossen*. Vorträge und Forschungen. Sigmaringen: J. Thorbecke, 1993.
- Bede. *De templo*. Edited by D. Hurst. Corpus Christianorum, Series Latina, 119A. Turnhout: Brepols, 1969.
- . "Explanatio Apocalypsis." In PL 93, cols. 192–206.
- . "Expositio in Marci evangelium." In PL 92, cols. 131–302.
- . In *Ezra et Nehemiam*. Edited by D. Hurst. Corpus Christianorum, Series Latina 119A, 237–392. Turnhout: Brepols, 1969.
- . In *proverbia Salomonis libri iii*. Edited by D. Hurst. Corpus Christianorum, Series Latina 119B, 23–163. Turnhout: Brepols, 1983.
- . In *sancti Iohannis evangelium expositio*. In PL 92, cols. 633–938.

- . *Libri quattuor in principium Genesis usque ad natiuitatem Isaac et eiectio-nem Ismahelis adnotationum (siue Hexaemeron)*. Edited by C.W. Jones. Corpus Christianorum, Series Latina 118A. Turnhout: Brepols, 1967.
- . *On the Temple*. Translated with notes by Sean Connolly, with an introduction by Jennifer O'Reilly. Translated Texts for Historians. Liverpool: Liverpool University Press, 1995.
- Bellomo, Mario. *The Common Legal Past of Europe, 1000–1800*. Translated by Lydia G. Cochrane. Studies in Medieval and Early Modern Canon Law. Washington, DC: Catholic University of America Press, 1995.
- Berger, Abraham. "Captive at the Gate of Rome: The Story of a Messianic Motif." *Proceedings of the American Academy for Jewish Research* 44 (1977): 1–17.
- Bériou, Nicole. "La confession dans les écrits théologiques et pastoraux du XIII^e siècle: Médication de l'âme ou démarche judiciaire?" In *L'Aveu: Antiquité et moyen-âge. Actes de la table ronde organisée par l'École française de Rome avec le concours du CNRS et de l'Université de Trieste, Rome 28–30 mars 1984*. Collection de l'École Française de Rome, 261–82. [Rome] Paris: École française de Rome: Diffusion de Boccard, 1986.
- Berman, Harold. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge, MA: Harvard University Press, 1983.
- Berman, Harold, and John Witte, Jr. "The Transformation of Western Legal Philosophy in Lutheran Germany." *Southern California Law Review* 62 (1989): 1575–1660.
- Bernstein, Alan E. *The Formation of Hell: Death and Retribution in the Ancient and Early Christian Worlds*. Ithaca, NY: Cornell University Press, 1993.
- Bethell, Denis L.T., and Marc Anthony Meyer. *The Culture of Christendom: Essays in Medieval History in Commemoration of Denis L.T. Bethell*. Edited by Marc Anthony Meyer. London, Rio Grande: Hambledon Press, 1993.
- Bezler, Francis. *Les pénitentiels espagnols: Contribution à l'étude de la civilisation de l'Espagne chrétienne du haut moyen âge*. Spanische Forschungen der Görresgesellschaft, 2nd Ser. Münster: Aschendorff, 1994.
- Bischoff, Bernhard. *Mittelalterliche Studien*. 2 vols. Stuttgart: Hiersemann, 1966–81.
- Bittner, M. *Der vom Himmel gefallene Brief Christi in seine morgenländischen Versionen und Rezensionen*. Denkschrift der Kaiserlichen Akademie der Wissenschaften zu Wien. Vienna, 1905.
- Black, Jonathan. "Psalm Use in Carolingian Prayerbooks: Alcuin's *Confessio Peccatorum Pura* and the Seven Penitential Psalms." *Mediaeval Studies* 65 (2003): 1–56.
- Bloomfield, Morton W. *The Seven Deadly Sins: An Introduction to the History of a Religious Concept, with Special Reference to Medieval English Literature*. [East Lansing]: Michigan State College Press, 1952.
- Blumenkranz, Bernhard. "Deux compilations canoniques de Florus de Lyon et l'action antijuive d'Agobard." *Revue historique de droit français et étranger, 4e Série* 33 (1955): 227–54, 560–82.
- . "Du Nouveau sur Bodo-Eléazar?" *Revue des études Juives* 112 (1953): 35–42. Repr. in Blumenkranz, *Juifs et Chrétiens: Patristique et moyen âge*. London: Variorum Reprints, 1977.
- . "Un pamphlet juif médio-latin de polémique antichrétienne." *Revue d'histoire et de philosophie religieuses* 34 (1954): 401–13. Repr. in Blumenkranz, *Juifs et Chrétiens: Patristique et moyen âge*. London: Variorum Reprints, 1977.
- Boesch-Gajano, Sofia. "Demoni e miracoli nei *Dialogi* di Gregorio Magno." In *Hagiographie, cultures et sociétés, IV^e–XII^e siècles. Actes du colloque organisé à Nanterre et à Paris (2–5 mai 1979)*, Université de Paris X Centre de Recherches sur l'Antiquité Tardive et le haut Moyen Âge, 263–81. Paris: Études Augustiniennes, 1981.

- Boniface. *Die Briefe des heiligen Bonifatius und Lullus*. Edited by Michael Tangl. Monumenta Germaniae Historica, Epistolae Selectae. Berlin: Weidmannsche Buchhandlung, 1916.
- . *The Letters of Saint Boniface*. Translated by Ephraim Emerton. Records of Civilization, Sources and Studies. New York: Columbia University Press, 1940.
- Bolchi, Elena Lucia. *La consacrazione nell'Ordo virginum: Forma di vita e disciplina canonica*. Tesi Gregoriana: Serie Diritto Canonico, 56. Rome: Editrice Pontificia Università Gregoriana, 2002.
- Booker, Courtney. "The Public Penance of Louis the Pious: A New Edition of the *Episcoporum de poenitentia, quam Hludowicus imperator professus est, relatio Compendiensis* (833)." *Viator* 39 (2008): 1–20.
- Boshof, Egon. *Erzbischof Agobard von Lyon: Leben und Werk*. Kölner Historische Abhandlungen. Cologne: Böhlau Verlag, 1969.
- Bosmajian, Haig. *Metaphor and Reason in Judicial Opinions*. Carbondale, IL: Southern Illinois University Press, 1992.
- . *The Freedom not to Speak*. New York: New York University Press, 1999.
- Bougard, François. "En marge du divorce de Lothaire II: Boson de Vienne, le cocu qui fut fait roi?" *Francia* 27 (2000): 33–51.
- . *La justice dans le royaume d'Italie de la fin du VIII^e siècle au début du XI^e siècle*. Bibliothèque des Écoles Françaises d'Athènes et de Rome, 291. Rome: École Française de Rome, 1995.
- Bouhot, Jean-Paul. "Alcuin et le *De catechizandis rudibus* de saint Augustin." *Recherches Augustiniennes* 15 (1980): 176–240.
- Bousset, W. *The Antichrist Legend: A Chapter in Christian and Jewish Folklore*. Translated by A.H. Keane. London: Hutchinson and Co., 1896.
- Brandes, Wolfram. "Tempora periculosa sunt. Eschatologisches im Vorfeld der Kaiserkrönung Karls des Großen." In *Das Frankfurter Konzil von 794. Kristallisationspunkt karolingischer Kultur: Akten zweier Symposien (vom 23. bis 27. Februar und vom 13. bis 15. Oktober 1994) anlässlich der 1200-Jahrfeier der Stadt Frankfurt am Main*, edited by Rainer Berndt. Quellen und Abhandlungen zur mittelhochrheinischen Kirchengeschichte. 49–79. Mainz: Gesellschaft für Mittelrheinische Kirchengeschichte, 1997.
- Bressolles, A. *Saint Agobard, évêque de Lyon (769–840) (Doctrine et action politique d'Agobard, 1)*. L'Eglise et L'Etat au Moyen-Age. Paris: Librairie philosophique J. Vrin, 1949.
- Brewer, Dexter Sutton. *A Penitent's Right to Waive the Obligation of the Seal of Confession: A Comparative Study of Canon and American Law*. Canon Law Studies, Washington, D.C.: Catholic University of America Press, 1993.
- Broggini, Gerardo. "La preuve dans l'ancien droit romain." In *La Preuve. Première Partie: Antiquité*. Recueils de la Société Jean Bodin, vol. 16. 223–76. Brussels: Éditions de la Librairie encyclopédique, 1963.
- Brommer, Peter. "Die bischöfliche Gesetzgebung Theodulfs von Orléans." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 91. *Kanonistische Abteilung* 60 (1974): 1–120.
- . "Die Rezeption der bischöflichen Kapitularien Theodulfs von Orléans." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 92. *Kanonistische Abteilung* 61 (1975): 113–60.
- Brooks, Peter. *Troubling Confessions: Speaking Guilt in Law and Literature*. Chicago: University of Chicago Press, 2000.
- Brown, Peter. "Society and the Supernatural: A Medieval Change." In Peter Brown, *Society and the Holy in Late Antiquity*. 302–22. London: Faber and Faber, 1982.
- Brown, T.S. *Gentlemen and Officers: Imperial Administration and Aristocratic Power in Byzantine Italy, A.D. 554–800*. Rome, 1984.
- Brown, Warren. *Unjust Seizure: Conflict, Interest, and Authority in an Early Medieval Society*. Conjunctions of Religion & Power in the Medieval Past. Ithaca, NY: Cornell University Press, 2001.

- . "The Use of Norms in Disputes in Early Medieval Bavaria." *Viator* 30 (1999): 15–40.
- , and Piotr Górecki, "What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970–2000)." In *Conflict in Medieval Europe: Changing Perspectives on Society and Culture*, edited by Warren C. Brown and Piotr Górecki. 1–35. Aldershot and Burlington, Vermont: Ashgate, 2003.
- Brunner, Heinrich. "Zeugen- und Inquisitionsbeweis im deutschen Gerichtsverfahren Karolingischer Zeit." In *Forschungen zur Geschichte des deutschen und französischen Rechts [repr.]*, vol. 51 (1865[1866]). 343–505. Sitzungsberichte der Philosophisch-Historischen Classe der Kaiserlichen Akademie der Wissenschaften, 88–247. Repr. Stuttgart: Hof- und Staatsdruckerei, 1866.
- Brunner, Karl. *Oppositionelle Gruppen im Karolingerreich*. Veröffentlichungen des Institut für Österreichische Geschichtsforschung [Wien], 25. Vienna: Böhlau, 1979.
- Brühl, Carlrichard. "Hincmariana." *Deutsches Archiv für Erforschung des Mittelalters* 20 (1964): 48–77.
- Buc, Philippe. "Text and Ritual in Ninth-Century Political Culture: Rome, 864." In *Medieval Concepts of the Past: Ritual, Memory, Historiography*, edited by Gerd Althoff, Johannes Fried, Patrick J. Geary. 123–38. Cambridge: Cambridge University Press, 2002.
- Buck, Thomas Martin. *Admonitio und Praedicatio. Zur religiös-pastoralen Dimension von Kapitularien und kapitulariennahen Texten (507–814)*. Freiburger Beiträge zur mittelalterlichen Geschichte 9. Frankfurt a. Main: Peter Lang, 1997.
- Buhler, Curt F. "Prayers and Charms in Certain Middle English Scrolls." *Speculum* 39 (1964): 270–78.
- Bullough, Donald. *Alcuin: Achievement and Reputation*. Leiden and Boston: Brill Academic Publishers, 2004.
- . "Alcuin and the Kingdom of Heaven: Liturgy, Theology and the Carolingian Age." In *Carolingian Essays*, edited by Uta-Renate Blumenthal. 1–69. Washington, DC: Catholic University of America Press, 1983.
- . *Carolingian Renewal: Sources and Heritage*. Manchester [England] and New York: Manchester University Press (Distributed exclusively in the USA and Canada by St. Martin's Press), 1991.
- Byl, Raymond. *Les juridictions scabinales dans le Duché de Brabant (des origines à la fin du XV^e siècle)*. Université Libre de Bruxelles: Travaux de la Faculté de Philosophie et Lettres, 17. Brussels: Presses Universitaires de Bruxelles, Presses Universitaires de France, 1965.
- Die Capitula Angilramni: Eine prozessrechtliche Fälschung Pseudoisidors*. Edited by Karl-Georg Schon. Monumenta Germaniae Historica, Studien und Texte 39. Hanover: Hahnsche Buchhandlung, 2006.
- Capitula Episcoporum*. Edited by Peter Brommer. Monumenta Germaniae Historica. Hanover: Hahnsche Buchhandlung, 1984.
- Capitularia Regum Francorum II*. Edited by A. Boretius and V. Krause. Monumenta Germaniae Historica, Leges. Hanover: Hahnsche Buchhandlung, 1883–97.
- Cardot, Fabienne. *L'Espace et le pouvoir: Étude sur l'Austrasie mérovingienne*. Paris: Publications de la Sorbonne, 1987.
- Carey, F.M. "The Scriptorium of Reims During the Archbishopric of Hincmar (845–882 A.D.)." In *Classical and Mediaeval Studies in Honor of Edward Kennard Rand Presented Upon the Completion of His Fortieth Year of Teaching*, edited by Leslie Webber Jones. Essay Index Reprint Series, 41–60. Freeport, NY: Books for Libraries Press, 1968.
- Chadwick, Nora K. *The Age of the Saints in the Early Celtic Church*. London and New York: Oxford University Press, 1961.
- Charlemagne. "Admonitio Generalis." Edited by Alfred Boretius. Monumenta Germaniae Historica, Leges, Sectio II: Capitularia, I, 52–62. Hanover: Hahnsche Buchhandlung, 1883.

- Chazelle, Celia Martin. *The Crucified God in the Carolingian Era: Theology and Art of Christ's Passion*. New York: Cambridge University Press, 2001.
- Chenu, Marie-Dominique. *L'Eveil de la conscience dans la civilisation médiévale*. Montréal: Institute d'études médiévales, 1969.
- Christianus, Stavelot. "Expositio in Mattheum Evangelistam." In PL 106, cols. 1261–1504.
- Claudius of Turin. *XXX Quaestiones super libros Regum*. In PL 104, cols. 623–810.
- Claussen, M.A. *The Reform of the Frankish Church: Chrodegang of Metz and the Regula Canoniorum in the Eighth Century*. Cambridge Studies in Medieval Life and Thought. Cambridge and New York: Cambridge University Press, 2004.
- Clercq, Charles de. *La législation religieuse franque. Étude sur les actes de conciles et les capitulaires, les statuts diocésains et les règles monastiques*. Louvain: Bureau du Recueil, Bibliothèque de l'Université, 1936.
- Cohen, Jeremy. *The Friars and the Jews: The Evolution of Medieval Anti-Judaism*. Ithaca, NY: Cornell University Press, 1982.
- [Collectio Dacheriana]. Edited by Luc d'Achery, *Spicilegium, sive Collectio veterum aliquot scriptorum qui in Galliae bibliothecis delituerant*, 509–64. Paris: Apud Montalant, 1723.
- [Collectio Vetus Gallica]. *Kirchenrecht und Reform im Frankenreich. Die Collectio Vetus Gallica: Die älteste systematische Kanonessammlung des fränkischen Gallien: Studien und Edition*. Edited by Hubert Mordek. Beiträge zur Geschichte und Quellenkunde des Mittelalters. Berlin and New York: W. de Gruyter, 1975.
- Collins, Roger, "Law and Ethnic Identity in the Western Kingdoms in the Fifth and Sixth Centuries." In *Medieval European Studies in Ethnic Identity and National Perspectives in Medieval Europe*, edited by A.R. Smyth. 1–23. Basingstoke, 1998.
- [Concilia]. *Les canons des conciles Mérovingiens (VI^e–VII^e siècles)*. Edited by Jean Gaudemet and Brigitte Basdevant. 2 vols. Sources Chrétiennes, 353–354. Paris: Éditions du Cerf, 1989.
- [Concilia]. *Concilia Africae, 345–525*. Edited by Charles Munier. Corpus Christianorum, Series Latina 149. Turnhout: Brepols, 1974.
- [Concilia]. *Concilia Aevi Karolini (I) [742–842]*. Edited by Albert Werminghoff. Monumenta Germaniae Historica Concilia II, 1. Hanover: Hahnsche Buchhandlung, 1906.
- [Concilia]. *Die Konzilien der karolingischen Teilreiche, 843–859*. Edited by Wilfried Hartmann. Monumenta Germaniae Historica, III: Concilia Aevi Karolini DCCCXLIII–DCCCLIX. Hanover: Hahnsche Buchhandlung, 1984.
- Conrad-O'Briain, H., and Thomas O'Loughlin. "The 'Baptism of Tears' in Early Anglo-Saxon Sources." *Anglo-Saxon England* 22 (1993): 65–83.
- Contreni, John. "Building Mansions in Heaven: The *Visio Baronti*, Archangel Raphael, and a Carolingian King." *Speculum* 78 (2003): 673–706.
- Corpus Iuris Canonici*. Edited by Emil A. von Friedberg. 2 vols. Leipzig, 1879–81; repr. Graz, 1959.
- Courcelle, Pierre. *Late Latin Writers and Their Greek Sources*. Translated by Harry E. Wedeck. Cambridge, MA: Harvard University Press, 1969.
- Cowan, Thomas A., and Donald A. Strickland. *The Legal Structure of a Confined Microsociety*. University of California, Berkeley Working Paper, 1965.
- Crocker, J. Christopher. "My Brother the Parrot." In *The Social Use of Metaphor: Essays on the Anthropology of Rhetoric*, edited by David J. Sapir and Christopher Crocker. 164–92. Philadelphia: University of Pennsylvania Press, 1977.
- . "The Social Functions of Rhetorical Forms." In *The Social Use of Metaphor: Essays on the Anthropology of Rhetoric*, edited by David J. Sapir and Christopher Crocker. 33–66. Philadelphia: University of Pennsylvania Press, 1977.
- Cushing, Kathleen G. *Papacy and Law in the Gregorian Revolution: The Canonistic Work of Anselm of Lucca*. Oxford Historical Monographs. Oxford and New York: Clarendon Press, Oxford University Press, 1998.

- Dagens, Claude. *Saint Grégoire le Grand. Culture et expérience chrétiennes*. Paris: Études Augustiniennes, 1977.
- Dahan, Gilbert. *Les intellectuels chrétiens et les juifs au moyen âge*. Paris: Éditions du Cerf, 1990.
- . *The Christian Polemic Against the Jews in the Middle Ages*. Translated by Jody Gladding. Notre Dame, IN: University of Notre Dame Press, 1998.
- Dan, Joseph. "Armilus: The Jewish Antichrist and the Origins and Dating of the *Sefer Zerubbabel*." In *Toward the Millenium: Messianic Expectations from the Bible to Waco*, vol. 77, edited by Peter Schäfer and Mark Cohen. 73–104. Studies in the History of Religions. Leiden: Brill, 1998.
- David, Jean Michel. "La faute et l'abandon: Théories et pratiques judiciaires à Rome à la fin de la République." In *L'Aveu: Antiquité et moyen-âge. Actes de la table ronde organisée par l'École française de Rome avec le concours du CNRS et de l'Université de Trieste, Rome 28–30 mars 1984*. Collection de l'École Française de Rome. 69–87. [Rome] Paris: École française de Rome: Diffusion de Boccard, 1986.
- Davis, Natalie Zemon. *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France*. Stanford: Stanford University Press, 1987.
- de Boer, Wietse. *The Conquest of the Soul: Confession, Discipline, and Public Order in Counter-Reformation Milan*. Studies in Medieval and Reformation Thought. Leiden, Boston: Brill, 2001.
- de Jong, Mayke. "Bonifatius: Een Angelsaksische priester-monnik en het Frankische hof." *Millenium: Tijdschrift voor Middeleeuwse Studies* 19 (2005): 5–23.
- . "Charlemagne's Church." In *Charlemagne: Empire and Society*, edited by Joanna Story, 103–35. Manchester and New York: Manchester University Press, 2005.
- . "Exegesis for an Empress." In *Medieval Transformations: Texts, Powers, and Gifts in Context*, edited by Esther Cohen and Mayke de Jong. 69–100. Leiden: Brill Academic Publishers, 2001.
- . *In Samuel's Image: Child Oblation in the Early Medieval West*. Leiden, New York, Cologne: E.J. Brill, 1996.
- . "Monastic Prisoners or Opting Out? Political Coercion and Honour in the Frankish Kingdoms." In *Topographies of Power in the Early Middle Ages*, vol. 6, edited by Mayke de Jong and Frans Theuws. 291–328. Transformation of the Roman World. Leiden: Brill, 2001.
- . "Power and Humility in Carolingian Society: The Public Penance of Louis the Pious." *Early Medieval Europe* 1 (1992): 29–52.
- . "Transformations of Penance." In *Rituals of Power: From Late Antiquity to the Early Middle Ages*, vol. 8, edited by Frans Theuws and Janet L. Nelson. 185–224. The Transformation of the Roman World. Leiden: Brill Academic Publishers, 2000.
- . "What Was Public About Public Penance? *Paenitentia Publica* and Justice in the Carolingian World." In *La giustizia nell'alto medioevo*, vol. 2. 863–904. Spoleto: Centro italiano di Studi sull'alto medioevo, 1996.
- Decretales Pseudo-Isidorianae et Capitula Angilramni*. Edited by Paul Hinschius. Leipzig, 1863; repr. Aalen: Scientia Verlag, 1963.
- Degenring, Susanne. "Die Frau die (wider-)spricht: Gelehrte Juristen über Frauen also Zeuginnen in Prozessen ihrer Männer." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 129. *Kanonistische Abteilung* 116 (1999): 203–24.
- Dekkers, Eligius. *Clavis patrum latinorum qua in Corpus Christianorum, edendum optimas quasque scriptorum recensiones a Tertulliano ad Bedam*. Steenbrugis: In Abbatia Sancti Petri, 1995.
- Delehaye, Hippolyte. "Note sur la legende de la lettre du Christ tombée du ciel." *Académie Royale de Belgique, Bulletin de la Classe Des Lettres* (1899), 171–213.
- Delumeau, Jean. *Sin and Fear: The Emergence of a Western Guilt Culture, 13th–18th Centuries*. New York: St. Martin's Press, 1990.

- Demyttenaere, Albert. "The Cleric, Women, and the Stain: Some Beliefs and Ritual Practices Concerning Women in the Early Middle Ages." In *Frauen in Spätantike und Mittelalter: Lebensbedingungen—Lebensnormen—Lebensformen. Beiträge zu einer internationalen Tagung am Fachbereich Geschichtswissenschaften der Freien Universität Berlin 18. bis 21. Februar 1987*, edited by Werner Affeldt. 141–65, and additional discussion at 167–72. Sigmaringen: J. Thorbecke, 1990.
- Depreux, Philippe. *Prosopographie de l'entourage de Louis le Pieux (781–840)*. Sigmaringen: J. Thorbecke, 1997.
- . "Ambitions et limites des réformes culturelles à l'époque carolingienne." *Revue historique* 623 (2002): 721–53.
- Deshman, Robert. "Benedictus Monarcha et Monachus. Early Medieval Ruler Theology and the Anglo-Saxon Reform." *Frümittelalterliche Studien* 22 (1988): 204–40.
- Devailly, Guy. "La pastorale en Gaule au IX^e siècle." *Revue d'Histoire de l'Église de France* 59 (1973): 23–54.
- Devisse, Jean. *Hincmar, Archevêque de Reims 845–882*. Geneva: Librairie Droz, 1975–76.
- . *Hincmar et la Loi*. Dakar: Publications de la section d'Histoire, Université de Dakar, Faculté des Lettres Humaines, 1962.
- . "L'influence de Julien Pomère sur les clercs carolingiens: De la pauvreté aux V^e et IX^e siècles." *Revue d'Histoire de l'Église de France* 56 (1970): 285–95.
- Diesenberger, Maximilian, and Herwig Wolfram. "Arn und Alkuin, 790 bis 804: Zwei Freunde und ihre Schriften." In *Erzbischof Arn von Salzburg*, edited by Meta Niederkorn-Bruck and Anton Scharer. 81–106. Veröffentlichungen des Instituts für Österreichische Geschichtsforschung, 40. Vienna, Munich: Oldenbourg, 2004.
- Dooley, Kate. "From Penance to Confession: The Celtic Contribution." *Bijdragen: Tijdschrift voor Filosofie en Theologie* 43 (1982): 390–411.
- Dopsch, Heinz. "Salzburg zur Zeit Erzbischof Arns." In *Erzbischof Arn von Salzburg*, edited by Meta Niederkorn-Bruck and Anton Scharer. 27–55. Veröffentlichungen des Instituts für Österreichische Geschichtsforschung, 40. Vienna, Munich: Oldenbourg, 2004.
- Douglas, Mary. *Natural Symbols: Explorations in Cosmology*. New York: Random House, 1970.
- . *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*. New York: Praeger, 1966; new edition London: Routledge, 2002.
- . *Leviticus as Literature*. Oxford: Oxford University Press, 1999.
- Driscoll, Michael S. "Ad Pueros Sancti Martini: A Critical Edition, English Translation, and Study of the Manuscript Transmission." *Traditio* 53 (1998): 37–61.
- . *Alcuin et la pénitence à l'époque carolingienne*. Liturgiewissenschaftliche Quellen und Forschungen. Münster: Aschendorff, 1999.
- Dubreucq, Alain. "Autour du *De virtutibus et vitiis* d'Alcuin" *Annales de Bretagne et des pays de l'Ouest* 111 (2004) [special issue: "Alcuin, de York à Tours: Écriture, pouvoir et réseaux dans l'Europe du haut Moyen Âge"]: 269–88.
- Duby, Georges. "Recherches sur l'évolution des institutions judiciaires pendant le X^e et XI^e siècle dans la Sud de la Bourgogne." In Georges Duby, *Hommes et Structures de Moyen Âge*. 7–46. Paris: Mouton, 1973.
- Dufner, Georg. *Die Dialoge Gregors des Grossen im Wandel der Zeiten und Sprachen*. Padua: Ateneo, 1968.
- Dumont, Beatrix. "Alcuin et les missions." *Annales de Bretagne et des pays de l'Ouest* 111 (2004) [special issue: "Alcuin, de York à Tours: Écriture, pouvoir et réseaux dans l'Europe du haut Moyen Âge"]: 417–29.
- Dumville, David N. "Ulster Heroes in the Early Irish Annals: A Caveat." *Eigse* 1977 (1977): 47–54.
- Dutton, Paul. "Eriugena, the Royal Poet." In *Jean Scot Écrivain: Actes du IV^e Colloque international, Montréal, 28 août–2 septembre 1983*, edited by G.-H. Allard. 51–80.

- Cahiers d'études médiévales, Cahier spécial, 1. Montréal and Paris: Éditions Bellarmin; J. Vrin, 1986.
- Eastwood, Bruce. *The Revival of Planetary Astronomy in Carolingian and Post-Carolingian Europe*. Aldershot [England] Burlington, VT: Ashgate/Variorum, 2002.
- Eastwood, Bruce, and Gerd Grasshoff. *Planetary Diagrams for Roman Astronomy in Medieval Europe, ca. 800–1500*. Transactions of the American Philosophical Society. Philadelphia: American Philosophical Society, 2004.
- Effros, Bonnie. *Merovingian Mortuary Archaeology and the Making of the Early Middle Ages*. Berkeley, Los Angeles, London: University of California Press, 2003.
- Eligius of Noyons. "Sermo 15." In PL 87, cols. 646–50.
- The Book of Enoch, or I Enoch: A New English Edition*. Edited and translated by Matthew Black, James C. Vanderkam, and Otto Neugebauer. Studia in Veteris Testamenti Pseudepigrapha. Leiden: E.J. Brill, 1985.
- [Epistolae]. Edited by Ernst Dümmler. *Epistolarum Tom. V, Karolini Aevi III*. Monumenta Germaniae Historica, Berlin: Weidmannos, 1899.
- [Epistolae]. Edited by Ernst Dümmler and Wilhelm Gundlach. *Epistolae Merowingici et Karolini*. Munich: Monumenta Germaniae Historica, 1994.
- [Epistolae]. Edited by Wilhelm Gundlach. *Epistolae Merowingici et Karolini Aevi Tomus I*. Munich: Monumenta Germaniae Historica, 1978.
- Epperlein, Siegfried. *Herrschaft und Volk im karolingischen Imperium: Studien über soziale Konflikte und dogmatisch-politische Kontroversen im fränkischen Reich*. Forschungen zur Mittelalterlichen Geschichte, 14. Berlin: Akademie Verlag, 1969.
- Esders, Stefan. *Römische Rechtstradition und merowingisches Königtum zum Rechtscharakter: Politischer Herrschaft in Burgund im 6. und 7. Jahrhundert*. Veröffentlichungen des Max-Planck-Instituts für Geschichte. Göttingen: Vandenhoeck & Ruprecht, 1997.
- Esders, Stefan, and Thomas Scharff, eds. *Eid und Wahrheitssuche: Studien zu rechtlichen Befragungspraktiken in Mittelalter und früher Neuzeit*. Gesellschaft, Kultur und Schrift. Frankfurt: Lang, 1999.
- Etchegaray Cruz, A. "Le rôle du *De catechizandis rudibus* de Saint Augustin dans la catéchèse missionnaire dès 710 jusqu'à 847." In *Studia Patristica*, Vol. XI, Part II, edited by F.L. Cross. Texte und Untersuchungen zur Geschichte der altchristlichen Literatur, 316–21. Berlin: Akademie-Verlag, 1972.
- Étaix, Raymond. "Les instructions aux pénitents de pseudo-Pontifical de Poitiers." *Revue des études Augustiniennes* 30 (1984): 297–302.
- . "Un manuel de pastorale de l'époque carolingienne (*Clm* 27152)." *Revue Bénédictine* 91 (1981): 105–30.
- Evans, G.R. "Notoriety: A Medieval Change of Attitude." *Ecclesiastical Law Journal* 4 (1997): 629–38.
- Faure, Phillipe. "L'ange du haut moyen âge occidental (IV^e–IX^e siècles): Création ou tradition?" *Médiévales* 15 (1988): 31–49.
- Fernandez, James W. "The Performance of Ritual Metaphors." In *The Social Use of Metaphor: Essays on the Anthropology of Rhetoric*, edited by David J. Sapir and Christopher Crocker. 100–31. Philadelphia: University of Pennsylvania Press, 1977.
- Filotas, Bernadette. *Pagan Survivals, Superstitions and Popular Cultures in Early Medieval Pastoral Literature*. Toronto: Pontifical Institute of Mediaeval Studies, 2005.
- Firey, Abigail. "Carolingian Ecclesiology and Heresy: A Southern Gallic Juridical Tract Against Adoptionism." *Sacris Erudiri* 39 (2000): 253–316.
- . "Blushing Before the Judge: Moral Arbitration in the Carolingian Empire." In *A New History of Penance*, edited by Abigail Firey. 173–200. Leiden: Brill Academic Publishers, 2008.

- . "Codices and Contexts: The Many Destinies of the *Capitula Angilramni* and the Challenges of Editing Small Canon Law Collections." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 94 (2008): 288–312.
- . "Ghostly Recensions in Early Medieval Canon Law: The Problem of the *Collectio Dacheriana* and Its Shades." *Tijdschrift Voor Rechtsgeschiedenis/Revue d'Histoire Du Droit/Legal History Review* 68 (2000): 63–82.
- . "Lawyers and Wisdom: The Use of the Bible in the Pseudo-Isidorian Forged Decretals." In *The Study of the Bible in the Carolingian Era*, vol. 3, edited by Celia Chazelle and Burton Van Name Edward. 189–214. *Medieval Church Studies*. Turnhout: Brepols, 2003.
- . "The Letter of the Law: Carolingian Exegetes and the Old Testament." In *With Reverence for the Word: Medieval Scriptural Exegesis in Judaism, Christianity, and Islam*, edited by Jane Dammen McAuliffe, Barry Walfish, and Joseph Ward Goering. 204–24. Oxford and New York: Oxford University Press, 2003.
- . "Useful Guilt: Canonists and Penance on the Carolingian Frontier." In *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, edited by Martin Brett and Kathleen G. Cushing. 15–33. *Church, Faith and Culture in the Medieval West*. Farnham, Surrey, and Burlington, VT: Ashgate, 2009.
- Fischer, E.H. "Gregor der Grosse und Byzanz: Ein Beitrag zur Geschichte der Päpstlichen Politik." *Zeitschrift der Savigny Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 36 (1950): 15–44.
- Fitting, Hermann, ed. *Juristische Schriften des früheren Mittelalters*. Halle, 1876; repr. Aalen: Scientia Verlag, 1965.
- Flint, Valerie. "Magic and Marriage in Ninth-Century Francia: Lothar, Hincmar—and Susanna." In *The Culture of Christendom: Essays in Medieval History in Commemoration of Denis L.T. Bethell*, edited by Marc Anthony Meyer. 61–74. London and Rio Grande: Hambledon Press, 1993.
- . *The Rise of Magic in Early Medieval Europe*. Princeton, NJ: Princeton University Press, 1991.
- . "Space and Discipline in Early Medieval Europe." In *Medieval Practices of Space*, vol. 23, edited by Barbara Hanawalt and Michal Kobialka. 149–66. *Medieval Cultures*. Minneapolis: University of Minnesota Press, 2000.
- . "Susanna and the Lothar Crystal: A Liturgical Perspective." *Early Medieval Europe* 4 (1995): 61–86.
- Folz, Robert. "La pénitence publique au IX^e siècle d'après les canons de l'évêque Isaac de Langres." In *L'encadrement religieux des fidèles au moyen-Âge et jusqu'au Concile de Trente: La paroisse, le clergé, la pastorale, la dévotion. Actes du 109e congrès national des sociétés savantes, Dijon, 1984: Section d'histoire médiévale et de philologie*, 1. 331–43. Paris: Ministère de l'éducation nationale, Comité des travaux historiques et scientifiques, 1985.
- Fontaine, Jacques. *Isidore de Séville et la culture classique dans l'Espagne wisigothique*. Paris: Études Augustiniennes, 1983 (2nd ed.).
- . "Pénitence publique et conversion personnelle: L'apport d'Isidore de Séville à l'évolution médiévale de la pénitence." *Revue de droit canonique* 28 (1978): 141–56.
- [Formulae]. *Formulae Merowingici et Karolini aevi, accedunt ordines iudiciorum Dei*. Edited by Karl Zeumer. *Monumenta Germaniae Historica, Legum, Sectio V: Formulae*. Hanover: Monumenta Germaniae Historica, 1886; repr. Hanover: Hahnsche Buchhandlung, 2001.
- Forstner, Karl. "Die Salzburger Skriptorium unter Virgil und das Verbrüderungsbuch von St. Peter." In *Virgil von Salzburg: Missionar und Gelehrter (Beiträge des Internationalen Symposiums vom 21.–24. September 1884 in der Salzburger Residenz)*, edited by Heinz Dopsch and Roswitha Juffinger. 135–40. Salzburg: Druckhaus Nonntal, 1985.

- Foucault, Michel. *Surveiller et punir: Naissance de la prison*. Translated into English by Alan Sheridan as *Discipline and Punish: The birth of the prison*. New York: Vintage Books, 2nd ed. trans. 1995 (orig. 1975).
- . *Sécurité, territoire, population: Cours au Collège de France (1977–1978)*. Edited by François Ewald, Alessandro Fontana, and Michel Senellart. Paris: Gallimard, Seuil, 2004.
- Fouracre, Paul. "Native Frankish Political Institutions in the Seventh Century." In *Franks and Alamanni in the Merovingian Period: An Ethnographic Perspective*, edited by Ian Wood. 285–300. Woodbridge: Boydell, 1998.
- Fournier, Paul, and Gabriel Le Bras. *Histoire des collections canoniques en Occident depuis les Fausses Décrétales jusqu'au Décret de Gratien*. Paris: Sirey, 1931; repr. Aalen: Scientia Verlag, 1972.
- Fowler-Magerl, Linda. *Clavis Canonum: Selected Canon Law Collections Before 1140: Access with Data Processing*. Monumenta Germaniae Historica, Hilfsmittel. Hanover: Hahnsche Buchhandlung, 2005.
- Fögen, Marie Theres. *Ordnung und Aufruhr im Mittelalter: Historische und Juristische Studien zur Rebellion*. Ius Commune. Frankfurt am Main: V. Klostermann, 1995.
- Fraher, Richard. "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof." *Law and History Review* 7 (1989): 23–88.
- Frakes, Robert M. *Contra potentium iniurias: The Defensor Civitatis and Late Roman Justice*. Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte, 90. Munich: C.H. Beck, 2001.
- Fransen, Paul-Irénée. "La discipline de l'Église dans un commentaire anonyme au Deutéronome écrit à Lyon au IX^e siècle." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 83 [127] (1997): 52–66.
- Frantzen, Allen J. *The Literature of Penance in Anglo-Saxon England*. New Brunswick, NJ: Rutgers University Press, 1983.
- . "The Significance of the Frankish Penitentials." *Journal of Ecclesiastical History* 30 (1979): 409–21.
- . "The Tradition of Penitentials in Anglo-Saxon England." *Anglo-Saxon England* (1983), 23–56.
- Freund, Stephan. *Von den Agilolfingern zu den Karolingern: Bayerns Bischöfe zwischen Kirchenorganisation, Reichsintegration und karolingischer Reform (700–847)*. Munich: C.H. Beck, 2004.
- Friesen, Bill. "Answers and Echoes: The *Libellus responsionum* and the Hagiography of North-Western European Mission." *Early Medieval Europe* 14 (2006): 153–72.
- Gaastra, Adriaan. "Penitentials and Canonical Authority." In *Texts and Identities in the Early Middle Ages*, edited by Richard Corradini, Rob Meens, Christina Pössel, and Philip Shaw. 191–203. *Forschungen zur Geschichte des Mittelalters* 12. Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2006.
- Gamble, Harry Y. *Books and Readers in the Early Church: A History of Early Christian Texts*. New Haven, CT: Yale University Press, 1995.
- Ganshof, François Louis. "La preuve dans le droit franc." In *La Preuve. Deuxième Partie. Moyen âge et temps modernes*, vol. II. 71–98. *Recueils de la société Jean Bodin pour l'Histoire Comparative des Institutions*, 17. Brussels: Editions de la librairie encyclopedique, 1965.
- . "L'Église et le pouvoir royal dans la monarchie franque sous Pépin III et Charlemagne." 95–141. *Settimane di Studio del Centro italiano di Studi sull'alto medioevo* 7. Spoleto: Centro italiano di Studi sull'alto medioevo, 1960.
- Gaudemet, Jean. *L'Église dans l'Empire romain (IV^e–V^e siècles)*. Histoire du droit et des institutions de l'Église en Occident, 3. Paris: Sirey, 1958.
- . "Les ordalies au moyen âge: Doctrine, législation et pratique canoniques." In *La Preuve. Deuxième Partie. Moyen âge et temps modernes*, vol. II. 99–135. *Recueils*

- de la société Jean Bodin pour l'Histoire Comparative des Institutions, 17. Brussels: Editions de la librairie encyclopedique, 1965.
- . *Les sources du droit de l'église en occident du II^e au VII^e siècle*. Initiations au christianisme ancien. [Paris]: Editions du Cerf/Editions du C.N.R.S., 1985.
- Gaudemet, Jean, and Brigitte Basdevant, trans., Charles de Clercq, ed. *Les canons des conciles mérovingiens, VI^e–VII^e siècles, texte latin de l'édition C. de Clercq*. Sources Chrétiennes, 353–54. Paris: Editions du Cerf, 1989.
- Geary, Patrick. "Oblivion Between Orality and Textuality in the Tenth Century." In *Medieval Concepts of the Past: Ritual, Memory, Historiography*, edited by Gerd Althoff, Johannes Fried, and Patrick J. Geary. 111–22. Publications of the German Historical Institute. Washington, DC: German Historical Institute, 2002.
- . *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millenium*. Princeton, NJ: Princeton University Press, 1994.
- Giese, Wolfgang. "In Iudaismum lapsus est: Jüdische Proselytenmacherei im frühen und hohen Mittelalter (600–1300)." *Historisches Jahrbuch* 88 (1968): 407–18.
- La Giustizia nell'alto Medioevo (Secoli V–VIII)*. Settimane di Studio del Centro italiano di Studi sull'alto medioevo. Spoleto: Centro italiano di Studi sull'alto medioevo, 1995.
- Glässing, Hartmut. *Die Verfassungsproblematik des Eides*. [S.l.: S.n.], 1976.
- Godman, Peter, ed. *Poetry of the Carolingian Renaissance*. London: Duckworth, 1985.
- . *Poets and Emperors: Frankish Politics and Carolingian Poetry*. New York: Clarendon Press of Oxford University Press, 1987.
- Godman, Peter, and Roger Collins, eds. *Charlemagne's Heir: New Perspectives on the Reign of Louis the Pious (814–840)*. Oxford: Oxford University Press, 1990.
- Goering, Joseph. "The Internal Forum and the Literature of Penance and Confession." *Traditio* 59 (2004): 175–227.
- Goldberg, Eric J. "Popular Revolt, Dynastic Politics, and Aristocratic Factionalism in the Early Middle Ages: The Saxon *Stellinga* Reconsidered." *Speculum* 70 (1995): 467–501.
- Górecki, P. "Communities of Legal Memory in Medieval Poland, c. 1200–1240." *Journal of Medieval History* 24 (1998): 127–54.
- Gorman, Michael. "The Canon of Bede's Works and the World of Ps.Bede." *Revue bénédictine* 111 (2001): 399–445.
- Gougaud, Louis. "Le prière dite de Charlemagne et les pièces apocryphes apparantées." *Revue d'Histoire Ecclésiastique* 20 (1924): 211–38.
- Graetz, Heinrich, and Bella Löwy. *History of the Jews from the Earliest Times to the Present Day*. London: David Nutt, 1891.
- Green, Richard Firth. *A Crisis of Truth: Literature and Law in Ricardian England*. Philadelphia: University of Pennsylvania Press, 1999.
- Gregorius Magnus. *Dialogues*. Edited and translated by Adalbert de Vogüé. Sources chrétiennes, 251, 260, 265. Paris: Editions du Cerf, 1978–80.
- . *Homiliae in Evangelia*. Edited by R. Étaix. Corpus Christianorum, Series Latina, 141. Turnhout: Brepols, 1999.
- . *Homiliae in Hiezechielem Prophetam*. Edited by Marcus Adriaen. Corpus Christianorum, Series Latina, 142. Turnhout: Brepols, 1971.
- . *Moralia in Job*. Edited by Marcus Adriaen. Corpus Christianorum, Series Latina, 143, 143A, 143B. Turnhout: Brepols, 1979.
- . *[Regula Pastoralis] Règle Pastorale*. Edited by Bruno Judic and Floribert Rommel. Translated by Charles Morel. Sources Chrétiennes, 381–82. Paris: Cerf, 1992.
- Grimlaicus presbiter. "Textus Regulae." In PL 103, cols. 577–664.
- Gros, M.S. "L'Ancien Ordo Gallican d'enterrement." *Ecclesia Orans* 14 (1997): 347–60.

- Grotans, Anna A. *Reading in Medieval St. Gall*. Cambridge: Cambridge University Press, 2006.
- Grote, Andreas E.J. *Anachorese und Zönobium: Der Rekurs des frühen westlichen Mönchtums auf monastische Konzepte des Ostens*. Historische Forschungen. Stuttgart: J. Thorbecke, 2001.
- Guillou, André. "L'évêque dans la société méditerranéenne des VI^e–VII^e siècles. Un modèle." *Bibliothèque de l'École des Chartes* 131 (1973): 5–19.
- Hageneder, Othmar. "Das *crimen maiestatis*, der Prozeß gegen die Attentäter Papst Leos III, und die Kaiserkrönung Karls des Großen." In Friedrich Kempf and Hubert Mordek, *Aus Kirche und Reich: Studien zu Theologie, Politik und Recht im Mittelalter: Festschrift für Friedrich Kempf zu seinem fünfundsiebzigsten Geburtstag und fünfzigjährigen Doktorjubiläum*. 55–79. Sigmaringen: J. Thorbecke, 1983.
- Haggenmüller, Reinhold. *Die Überlieferung der Beda und Egbert zugeschriebenen Bußbücher*. Europäische Hochschulschriften 3. Frankfurt am Main, Bern, etc.: P. Lang, 1991.
- Haimo of Halberstat. "Ennarratio in duodecim prophetas minores (in Joel)." In PL 117, cols. 97–108.
- . "Expositio in Apocalypsin beatis Iohannis libri septem." In PL 117, cols. 937–1220.
- . "Homiliae de Tempore." In PL 118, cols. 25–31.
- . "In divi Pauli epistolas expositio, in Epistolam ad Romanos." In PL 117, cols. 361–508.
- Haltgar of Cambrai. "De vitiis et virtutibus et de ordine poenitentium (Praefatio)." In PL 105, cols. 651–58.
- Hall, Isaac H. "The Letter of Holy Sunday." *Journal of the American Oriental Society* 15 (1893): 121–42.
- Halliday, W.R. "A Note Upon the Sunday Epistle and the Letter of Pope Leo." *Speculum* 2 (1927): 73–78.
- Hamilton, Sarah. *The Practice of Penance, 900–1050*. Royal Historical Society Studies in History. Woodbridge, Suffolk, and Rochester, NY: Royal Historical Society and Boydell Press, 2001.
- Hanawalt, Barbara, and Michal Kobialka. *Medieval Practices of Space*. Medieval Cultures. Minneapolis: University of Minnesota Press, 2000.
- Harries, Jill. *Law and Empire in Late Antiquity*. Cambridge: Cambridge University Press, 1999.
- Hartmann, Wilfried. "Der Bischof als Richter nach den kirchenrechtlichen Quellen des 4. bis 7. Jahrhunderts." In *La giustizia nell'alto medioevo (secoli V–VIII), 7–13 aprile 1994*, vol. 42. Settimane di Studio del Centro italiano di Studi sull'alto medioevo. II: 805–42. Spoleto: Centro italiano di Studi sull'alto medioevo, 1995.
- . "Karl der Große und das Recht." In *Karl der Grosse und sein Nachwirken. 1200 Jahre Kultur und Wissenschaft in Europa/Charlemagne and his Heritage: 1200 Years of Civilization and Science in Europe. Vol. 1: Wissen und Weltbild/Scholarship, Worldview and Understanding*, edited by P. Butzer, Kerner. 173–92. Turnhout: Brepols, 1997.
- . "Die karolingische Reform und die Bibel." *Annuario Historiae Conciliorum* 18 (1986): 58–74.
- . "Laien auf Synoden der Karolingerzeit." *Annuario Historiae Conciliorum* 10 (1978): 249–69.
- . "Die Mainzer Synod des Hrabanus Maurus." In *Hrabanus Maurus: Lehrer, Abt und Bischof*, edited by Raymund Kottje and Harald Zimmermann. Mainz, Wiesbaden: Akademie der Wissenschaften und der Literatur and Steiner, 1982.
- . *Die Synoden der Karolingerzeit im Frankenreich und in Italien*. Paderborn: F. Schöningh, 1989.
- . "Zu einigen Problemen der karolingischen Konzilsgeschichte." *Annuario Historiae Conciliorum* 9 (1977): 6–28.

- . "Zur Autorität des Papsttums im karolingischen Frankenreich." In *Mönchtum, Kirche, Herrschaft, 750–1000*, edited by Dieter R. Bauer, Rudolf Hiestand, Brigitte Kasten, and Sönke Lorenz. 113–32. Sigmaringen: J. Thorbecke, 1998.
- Hattenhauer, H. "Der gefälschte Eid." In *Fälschungen im Mittelalter. Internationaler Kongreß der Monumenta Germaniae Historica München, 16.–19. September 1986. 2: Gefälschte Rechtstexte. Der bestrafte Fälscher*, Monumenta Germaniae Historica Schriften 33.2, 661–89. Hanover: Hahnsche Buchhandlung, 1988.
- Hazard, Paul. *La Crise de la conscience Européenne (1680–1715)*. Paris: Boivin, 1935.
- Head, Thomas, ed. *Medieval Hagiography: An Anthology*. New York: Routledge, 2001.
- Heer, Joseph Michael. *Ein Karolingischer Missionskatechismus*. Freiburg, 1911.
- Heerman, Frank R., and Brownlow M. Speer. "Facing the Accuser: Ancient and Medieval Precursors of the Confrontation Clause." *Virginia Journal of International Law* 34 (1994): 481–552.
- Hefele, Karl Joseph von, William R. Clark, trans. *A History of the Councils of the Church, from the Original Documents*. 2nd ed. New York: AMS Press, 1872.
- Heidecker, Karl Josef. *Kerk, Huwelijck en Politieke Macht de Zaak Lotharius II (855–869)*. Amsterdam: [S.n.], 1997.
- Heil, Johannes. "Agobard, Amolo, das Kirchengut und die Juden von Lyon." *Francia* 25 (1998): 39–76.
- . *Kompilation oder Konstruktion? die Juden in den Pauluskomentaren des 9. Jahrhunderts*. Forschungen zur Geschichte der Juden. Hanover: Hahnsche Buchhandlung, 1998.
- Heinzelmann, Martin. *Bischofsherrschaft in Gallien: Zur Kontinuität Römischer Führungsschichten vom 4. bis 7. Jahrhundert. Soziale, Prosopographische und Bildungsgeschichtliche Aspekte*. Beihefte der Francia, 5. Zürich, Munich: Artemis, 1976.
- Helmholz, R.H. "The Privilege and the *Ius Commune*: The Middle Ages to the Seventeenth Century." In *The Privilege Against Self-Incrimination: Its Origins and Development*, edited by R.H. Helmholz, Charles M. Gray, John H. Langbein, Eben Moglen, Henry E. Smith, and Albert W. Alschuler. 17–46. Chicago and London: University of Chicago Press, 1997.
- Hen, Yitzhak. *Culture and Religion in Merovingian Gaul, A.D. 481–751*. Leiden, New York, Cologne: E.J. Brill, 1995.
- . "Charlemagne's Jihad." *Viator* 37 (2006): 36–51.
- . "The Structure and Aims of the 'Visio Baronti': An Analysis of the Typology of Medieval Visionary Literature and the Development of the Idea of the Otherworld." *Journal of Theological Studies* 47 (1996): 477–97.
- Henberg, Marvin. *Retribution: Evil for Evil in Ethics, Law, and Literature*. Philadelphia, PA: Temple University Press, 1990.
- Herde, Peter. "Die Bestrafung von Fälschern nach weltlichen und kirchlichen Rechtsquellen." In *Fälschungen im Mittelalter. Internationaler Kongreß der Monumenta Germaniae Historica, München, 16.–19. September 1986*, vol. 33, I–V. 577–605. Schriften der Monumenta Germaniae Historica, II. Hanover: Hahnsche Buchhandlung, 1988.
- Herren, Michael. "Hiberno-Latin Philology: The State of the Question." In *Insular Latin Studies: Papers on Latin Texts and Manuscripts of the British Isles, 550–1066*, edited by Michael Herren. 1–22. Toronto: Pontifical Institute of Mediaeval Studies, 1981.
- Hess, Hamilton. *The Canons of the Council of Sardica, A.D. 343: A Landmark in the Early Development of Canon Law*. Oxford Theological Monographs. Oxford: Clarendon Press, 1958.
- Heuclin, J. *Hommes de Dieu et fonctionnaires du roi en Gaule du Nord du V^e au IX^e S. Villeneuve d'Ascq: Presses universitaires du Septentrion*, 1998.
- Hexter, Ralph J. *Equivocal Oaths and Ordeals in Medieval Literature*. Cambridge, MA: Harvard University Press, 1975.

- Hill, Joyce, and Mary Swan, eds. *The Community, the Family, and the Saint: Patterns of Power in Early Medieval Europe: Selected Proceedings of the International Medieval Congress, University of Leeds, 4–7 July 1994, 10–13 July 1995*. Turnhout: Brepols, 1998.
- Hincmar of Rheims. *De cavendis vitiis et virtutibus exercendis*. Edited by Doris Nachtmann. Munich: Monumenta Germaniae Historica, 1998.
- . *De divortio Lotharii regis et Theutberga reginae*. Edited by Letha Böhringer. Monumenta Germaniae Historica, Concilia, Tomus IV, Supplementum I. Hanover: Hahnsche Buchhandlung, 1992.
- . *De ordine palatii*. Edited by Thomas Gross and Rudolf Schieffer. Monumenta Germaniae Historica, Fontes iuris Germanici antiqui in usum scholarum separatim editi 3. Hanover: Hahnsche Buchhandlung, 1980.
- . *De presbiteris criminosis: Ein Memorandum Erzbischof Hinkmars von Reims über straffällige Kleriker*. Edited by Gerhard Schmitz. Monumenta Germaniae Historica Studien und Texte, 34. Hanover: Hahnsche Buchhandlung, 2004.
- . *Hincmari Archiepiscopi Remensis Epistolae = Die Briefe Des Erzbischofs Hinkmar von Reims*. Edited by Ernst Perels. Munich: Monumenta Germaniae Historica, 1975.
- . "Zweites Kapitular." In *Capitula Episcoporum, II*, edited by Rudolf Pokorný and Martina Stratmann. 45–70. Monumenta Germaniae Historica. Hanover: Hahnsche Buchhandlung, 1995.
- Holzhauser, Heinz. "Zum Strafgedanken im frühen Mittelalter." In *Überlieferung, Bewahrung und Gestaltung in der rechtsgeschichtlichen Forschung*, edited by Stephan Buchholz, Paul Mikat, Dieter Werkmüller, and Ekkehard Kaufmann. 179–92. Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, new series, vol. 69. Paderborn: F. Schöningh, 1993.
- Horbury, William. *Jewish Messianism and the Cult of Christ*. London: SCM Press, 1998.
- . *Jews and Christians in Contact and Controversy*. Edinburgh: T and T Clark, 1998.
- Hödl, Ludwig. *Die Geschichte der scholastischen Literatur und der Theologie der Schlüsselgewalt*. Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters. Münster Westf.: Aschendorff, 1960.
- Houston, Walter. *Purity and Monotheism: Clean and Unclean Animals in Biblical Law*. Journal for the Study of the Old Testament Supplement Series 140. Sheffield: Sheffield Academic Press, 1993.
- Hrabanus, Maurus. "Commentaria in Ezechielem." In PL 110, cols. 497–1084.
- . *Commentaria in libros IV Regum*. In PL 109, cols. 9–280.
- . *De institutione clericorum / Über die Unterweisung der Geistlichen (Lateinisch-Deutsch)*. Edited and translated by Detlev Zimpel. Fontes Christiani, 61. Turnhout: Brepols, 2006.
- . "De universo." In PL 111, cols. 9–614.
- . *Enarrationum in epistolas beati Pauli libri triginta, Lib. II*. In PL 111, cols. 1273–1616.
- . "Ennaratio super Deuteronomium liber quatuor." In PL 108, cols. 837–998.
- . "Epistolae." Edited by E. Dümmler. Monumenta Germaniae Historica, Epistolae V. Berlin: Weidmanns, 1899.
- . "Expositio in Proverbia Salomonis." In PL 111, cols. 679–792.
- . *In librum Iudicum*. In PL 108, cols. 1111–1200.
- Hrotsvitha. *Hrotsvithae Opera*. Edited by Karl Strecker. Bibliotheca Scriptorum Graecorum et Romanorum Teubneriana. Leipzig: B.G. Teubner, 1906.
- . *Opera Omnia*. Edited by Walter Berschin. Bibliotheca Scriptorum Graecorum et Romanorum Teubneriana. Munich: Saur, 2001.
- . *Hrotsvithae Opera*. Edited by H. Homeyer. Munich, Paderborn, Vienna: Schöningh, 1970.
- . *The Plays of Hrotsvit of Gandersheim*. Translated by Katharina M. Wilson. New York: Garland Pub., 1989.

- . *The Plays of Hrotswitha of Gandersheim*. Translated by Larissa Bonfante. Oak Park, IL: Bolchazy-Carducci Publishers, 1986.
- Hughes, Kathleen. *The Church in Early Irish Society*. London: Methuen, 1966.
- Humfress, Caroline. "A New Legal Cosmos: Late Roman Lawyers and the Early Medieval Church." In *The Medieval World*, edited by Peter Linehan and Janet L. Nelson. 557–75. London and New York: Routledge, Taylor and Francis Group, 2001.
- Hyams, Paul. "Ius commune et common law au Moyen Âge: Les scélérats et les honnêtes gens." *Bibliothèque de l'école des chartes* 158 (2000): 407–30.
- . *Rancor and Reconciliation in Medieval England*. Ithaca, NY, and London: Cornell University Press, 2003.
- Hyland, William P. "Prophecy and Community in Rudolph of Fulda's Vita Leobae." In *Prophet Margins: The Medieval Vatic Impulse and Social Stability*, edited by E.L. Ridsen, Karen Moranski, and Stephen Yardell. 29–42, 189–93. Studies in the Humanities: Literature-Politics-Society, 67. New York: Peter Lang, 2004.
- I Deug-Su. "Lioba—Dilecta Bonifatii. Eine Liebesgeschichte im 8. Jahrhundert?" *Medieval English Studies (Korea)* 10 (2002): 29–80.
- Irenaeus. *Contre les hérésies. Livres I–V*. Edited by Adelin Rousseau et al. Sources chrétiennes 263–64, 293–94, 210–11, 100, 152–53. Paris: Les Éditions du Cerf, 1965–82.
- . *Contre les hérésies: Dénonciation et Réfutation de la Gnose au nom menteur*. Translated by Adelin Rousseau. Paris: Les Éditions du Cerf, 1984.
- . *Sancti Irenaei episcopi Lugdunensis libros quinque adversus haereses*. Edited by W. Wigan Harvey. Cambridge: Cambridge University Press, 1857.
- . *St. Irenaeus of Lyons Against the Heresies*, vol. 1. Translated by Dominic J. Unger, and John J. Dillon. Ancient Christian Writers 55. New York: Paulist Press, 1992.
- Isidorus. *Isidori Hispalensis episcopi Etymologiarum sive Originum libri XX*. Edited by W.M. Lindsay. Scriptorum Classicorum Bibliotheca Oxoniensis, s.p. Oxford: Clarendon Press, 1911.
- Jacobs, Uwe Kai. *Die Regula Benedicti als Rechtsbuch: Eine rechtshistorische und rechtstheologische Untersuchung*. Forschungen zur Kirchlichen Rechtsgeschichte und zum Kirchenrecht. Cologne: Böhlau, 1987.
- Jaeger, Hasso. "La preuve judiciaire d'après la tradition rabbinique et patristique." In *La Preuve. Première Partie: Antiquité*. Recueils de la Société Jean Bodin, vol. 16. 415–594. Brussels: Éditions de la Librairie encyclopédique, 1963.
- Jager, Eric. *The Book of the Heart*. Chicago: University of Chicago Press, 2000.
- Jahn, J. *Ducatus Baiuvariorum: Das bairische Herzogtum der Agilolfinger*. Monographien zur Geschichte des Mittelalters, 35. Stuttgart, 1991.
- James, Montague Rhodes. "A Fragment of the Book of Enoch in Latin." In *Apocrypha Anecdota: A Collection of Thirteen Apocryphal Books and Fragments*. Texts and Studies (Cambridge, England) v. 2, no. 3. 146–50. Nendeln: Kraus Reprint, 1967 (1st ed. Cambridge University Press, 1893).
- Jasper, Detlev, and Horst Fuhrmann. *Papal Letters in the Early Middle Ages*. History of Medieval Canon Law. Washington, DC: Catholic University of America Press, 2001.
- Jehl, Rainer. "Die Geschichte des Lasterschemas und seiner Funktion." *Franziskanische Studien* 64 (1982): 261–359.
- Jerome. *Commentarii in Prophetas Minores*. Edited by Marcus Adriaen. Corpus Christianorum, Series Latina, 76, 76A. Turnhout: Brepols, 1969.
- . *Commentariorum in Matheum Libri IV*. Edited by D. Hurst and M. Adriaen. Corpus Christianorum, Series Latina, 77. Turnhout: Brepols, 1969.
- . *Sancti Eusebii Hieronymi Epistulae*. Edited by Isidor Hilberg. Corpus Scriptorum Ecclesiasticorum Latinorum, 54–56 (Vol. 56/1). Vindobonae: Verlag der Österreichischen Akademie der Wissenschaften, 1996.
- Judic, Bruno. "Confessio chez Grégoire le Grand, entre l'intériorité et l'extériorité: L'aveu de l'âme et l'aveu du corps." In *L'Aveu: Antiquité et moyen-Âge. Actes de la*

- table ronde organisée par l'école française de Rome avec le concours du CNRS et de l'Université de Trieste, Rome 28–30 mars 1984. 169–90. Rome: École française de Rome, 1986.
- Julianus Pomerius. *The Contemplative Life*. Translated by Mary Josephine Suelzer. Ancient Christian Writers. Westminster, MD: Newman Bookshop, 1947.
- . “De vita contemplativa libri tres.” PL 59, cols. 415–520.
- . *La Vita Contemplativa*. Translated by Mario Spinelli. Collana di Testi Patristici. Rome: Città nuova editrice, 1987.
- Jullien, Marie-Hélène, and Françoise Perelman. *Clavis des auteurs Latins du moyen âge territoire Français, 735–987*. Turnhout: Brepols, 1994.
- . *Clavis des auteurs Latins du moyen âge territoire Français, 735–987, tomus II: Alcuin*. Turnhout: Brepols, 1999.
- Jussen, Bernhard, ed. *Ordering Medieval Society: Perspectives on Intellectual and Practical Modes of Shaping Social Relations*. The Middle Ages Series. Philadelphia: University of Pennsylvania Press, 2001.
- Kaiser, Reinhold. *Bischofsherrschaft zwischen Königtum und Fürstenmacht. Studien zur bischöflichen Stadtherrschaft im West-Fränkisch-Französischen Recht im frühen und hohen Mittelalter*. Pariser Historische Studien, 17. Bonn: Rohrscheid, 1981.
- . “Les évêques de Langres dans leur fonction de ‘missi dominici’.” In *Aux origines d'une seigneurie ecclésiastique. Langres et ses évêques VIII^e–XI^e siècles. Actes du colloque Langres-Ellwangen (Langres, 28 Juin 1985)*. Langres, 1986.
- Katzenellenbogen, Adolf. *Allegories of the Virtues and Vices in Mediaeval Art from Early Christian Times to the Thirteenth Century*. London, Nendeln, Liechtenstein: The Warburg Institute and Kraus Reprint, 1968.
- Keck, David. *Angels & Angelology in the Middle Ages*. New York: Oxford University Press, 1998.
- Keefe, Susan A. *Water and the Word: Baptism and the Education of the Clergy in the Carolingian Empire*. Publications in Medieval Studies. Notre Dame, IN: University of Notre Dame Press, 2002.
- Kelleher, John V. “Early Irish History and Pseudo-History.” *Studia Hibernica* 3 (1963): 113–27.
- . “The Táin and the Annals.” *Ériu* 22 (1971): 107–27.
- Kelleher, Marie A. “Law and the Maiden: *Inquisitio*, *Fama* and the Testimony of Children in Medieval Catalonia.” *Viator* 37 (2006): 351–67.
- Kenney, James F. *The Sources for the Early History of Ireland: Ecclesiastical: An Introduction and Guide*. New York: Octagon Books, 1966.
- Kerff, Franz. “*Libri paenitentiales* und kirchliche Strafgerichtsbarkeit bis zum Decretum Gratiani: Ein Diskussionsverslag.” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 75 (1989): 23–57.
- . “Mittelalterliche Quellen und Mittelalterliche Wirklichkeit: Zu den Konsequenzen einer jüost erschienenen Edition für unser Bild kirchlicher Reformbemühungen.” *Rheinische Vierteljahrsblätter* 51 (1987): 275–86.
- Kéry, Lotte. *Canonical Collections of the Early Middle Ages (ca. 400–1140): A Bibliographical Guide to the Manuscripts and Literature*. History of Medieval Canon Law. Washington, DC: Catholic University of America Press, 1999.
- Koeniger, Albert Michael. *Die Militärseelsorge der Karolingerzeit: Ihr Recht und ihre Praxis*. Munich: Lentner, 1918.
- Konrad, Robert. *De Ortu et Tempore Antichristi: Antichristvorstellung und Geschichtsbild des Abtes Adso von Montier-en-Der*. Münchener Historische Studien Abteilung Mittelalterliche Geschichte. Regensburg: Michael Lassleben, 1964.
- Kornbluth, Genevra. *Engraved Gems of the Carolingian Empire*. University Park: Pennsylvania State University Press, 1995.
- . “The Seal of Lothar II: Model and Copy.” *Francia* 17 (1990): 55–68.

- . "The Susanna Crystal of Lothar II: Chastity, the Church, and Royal Justice." *Gesta* 31 (1992): 25–39.
- Kottje, Raymund. *Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus: Ihre Überlieferung und ihre Quellen*. Berlin and New York: W. de Gruyter, 1980.
- . "Busspraxis und Bussritus." In *Segni e riti nella chiesa altomedievale occidentale, 11–17 aprile 1985*, vol. 1. 369–403. Settimane di Studio del Centro italiano di Studi sull'alto medioevo, 33. Spoleto: Centro italiano di Studi sull'alto medioevo, 1987.
- . "Buße oder Strafe?" Zur *iustitia* in den *libri paenitentiales*. In *La giustizia nell'alto medioevo (secoli V–VIII)*, 7–13 aprile 1994. I:443–74. Settimane di Studio del Centro italiano di Studi sull'alto medioevo, 42. Spoleto: Centro italiano di Studi sull'alto medioevo, 1995.
- . "Intentions- oder Tathaftung? Zum Verständnis der frühmittelalterlich Bußbücher." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 91 (2005): 738–41.
- . "Kirchliches Recht und päpstlicher Autoritätsanspruch. Zu den Auseinandersetzungen über die Ehe Lothars II." In Friedrich Kempf and Hubert Mordek, *Aus Kirche und Reich: Studien zu Theologie, Politik und Recht im Mittelalter: Festschrift für Friedrich Kempf zu seinem fünfundsiebzigsten Geburtstag und fünfzigjährigen Doktorjubiläum*. 97–103. Sigmaringen: J. Thorbecke, 1983.
- . "Überlieferung und Rezeption der irischen Bußbücher auf dem Kontinent." In *Die Iren und Europa im früheren Mittelalter*, vol. 1, edited by Heinz Löwe. 511–24. Stuttgart: Klett-Cotta, 1982.
- Kottje, Raymund, and Harald Zimmermann, eds. *Hrabanus Maurus Lehrer, Abt und Bischof*. Mainz and Wiesbaden: Akademie der Wissenschaften und der Literatur Steiner, 1982.
- Kottje, Raymund, and Helmut Maurer, eds. *Monastische Reformen im 9. und 10. Jahrhundert*. Vorträge und Forschungen. Sigmaringen: J. Thorbecke, 1989.
- Koziol, Geoffrey. *Begging Pardon and Favor: Ritual and Political Order in Early Medieval France*. Ithaca, NY: Cornell University Press, 1992.
- Körntgen, Ludger. *Studien zu den Quellen der frühmittelalterlichen Bussbücher*. Quellen und Forschungen zum Recht im Mittelalter. Sigmaringen: J. Thorbecke, 1993.
- Krah, Adelheid. *Die Entstehung der "Potestas Regia" Im Westfrankenreich während der ersten Regierungsjahre Kaiser Karl II. (840–877)*. Berlin: Akademie, 2000.
- Kramer, Susan R. "The Priest in the House of Conscience." *Viator* 37 (2006): 149–66.
- Kuehne, Oswald Robert. *A Study of the Thais Legend with Special Reference to Hrothsvitha's "Paphnutius"*. Philadelphia: University of Pennsylvania, 1922.
- Kurtscheid, Bertrand. *A History of the Seal of Confession*. Edited and translated by Arthur Preuss. St. Louis, MO: B. Herder, 1927.
- Kuttner, Stephan. "Ecclesia de occultis non iudicat." In *Acta Congressus Iuridici Internationalis... Romae... 1931*, vol. 3. 225–46. Rome, 1935–37.
- Laato, Anni Maria. *Jews and Christians in De duobus montibus Sina et Sion: An Approach to Early Latin Adversus Iudaeos Literature*. Abo: Abo Akademi University Press, 1998.
- Laistner, Max Ludwig Wolfram. "The Influence During the Middle Ages of the Treatise *de Vita Contemplativa* and Its Surviving Manuscripts." In *Miscellanea G. Mercati*. 344–58. Studi e Testi, vols. 121–126. Vatican City: Biblioteca Apostolica Vaticana, 1946.
- Lambot, C. "Sermons complétés. Fragments de sermons perdus. Allocution inédite de S. Augustin." *Revue bénédictine* 51 (1939): 3–30.
- Landau, Peter. "Die *Lex Baiuvariorum*: Entstehungszeit, Entstehungsort und Charakter von Bayerns ältester Rechts- und Geschichtsquelle." In *Bayerische Akademie der Wissenschaften: Philosophische-Historische Klasse: Sitzungsberichte, Jahrgang 2004, Heft 3*. 1–12. Munich, 2004.

- Landes, Richard. "Lest the Millennium be Fulfilled: Apocalyptic Expectations and the Pattern of Western Chronography 100–800 c.e." In *The Use and Abuse of Eschatology in the Middle Ages*, edited by Werner Verbeke, Daniel Verhelst, and Andreis Welkenhuysen. 137–211. Mediaevalia Lovaniensia. Louvain: Leuven University Press, 1988.
- Lea, Henry Charles. *A History of Auricular Confession and Indulgences in the Latin Church*. Philadelphia, PA: Lea Brothers & Co., 1896.
- Lear, F.S. *Treason and Related Offences in Roman and Germanic Law*. Austin: University of Texas Press, 1965.
- Lees, Clare A. "The 'Sunday Letter' and the 'Sunday Lists'." *Anglo-Saxon England* 14 (1985): 129–51.
- Leidradus Lugdunensis. "Liber de sacramento baptismi ad Carolum magnum imperatorem." In PL 99, cols. 853–72.
- [Leges]. *Leges*. Edited by Georg Heinrich Pertz. Monumenta Germaniae Historica. Hanover: Hahnsche Buchhandlung, 1835.
- Leites, Edmund, ed. *Conscience and Casuistry in Early Modern Europe*. Ideas in Context. Cambridge, New York, Paris: Cambridge University Press; Editions de la Maison des sciences de l'homme, 1988.
- Lenski, Noel E. "Evidence for the *Audientia Episcopalis* in the New Letters of Augustine." In *Law, Society, and Authority in Late Antiquity*, edited by Ralph W. Mathisen. 83–97. Oxford: Oxford University Press, 2001.
- Lévy, Jean-Philippe. "Le problème de la preuve dans les droits savants au moyen âge (1)." In *La Preuve. Deuxième Partie. Moyen âge et temps modernes*, vol. II. 137–67. Recueils de la société Jean Bodin pour l'Histoire Comparative des Institutions, 17. Brussels: Editions de la librairie encyclopedique, 1965.
- [Liber Pontificalis]. *The Lives of the Eighth-Century Popes (Liber Pontificalis): The Ancient Biographies of Nine Popes from AD 715 to AD 817*. Translated by Raymond Davis. Translated Texts for Historians. Liverpool: Liverpool University Press, 1992.
- Liebeschütz, Hans. *Synagoge und Ecclesia: Religionsgeschichtliche Studien über die Auseinandersetzung der Kirche mit dem Judentum im Hochmittelalter*. Veröffentlichung der Deutschen Akademie für Sprache und Dichtung Darmstadt, 55. Heidelberg: Verlag Lambert Schneider, 1983.
- Limor, Ora, and Guy G. Stroumsa, eds. *Contra Iudaeos: Ancient and Medieval Polemics Between Christians and Jews*. Texts and Studies in Medieval and Early Modern Judaism, 10. Tübingen: J.C.B. Mohr (Paul Siebeck), 1996.
- Linder, Amnon. *The Jews in Roman Imperial Legislation*. Detroit, MI, and Jerusalem: Wayne State University Press and the Israel Academy of Sciences and Humanities, 1987.
- . *The Jews in the Legal Sources of the Early Middle Ages*. Detroit, MI, and Jerusalem: Wayne State University Press and the Israel Academy of Sciences and Humanities, 1997.
- [Liutberg]. *Das Leben der Liutbirg*. Translated by Ernst Witte. Die Geschichtschreiber der Deutschen Vorzeit, 3. Leipzig: E. Wiegandt, 1944.
- Llewellyn, Peter. "The Roman Church in the Seventh Century: The Legacy of Gregory the Great." *Journal of Ecclesiastical History* 25 (1974): 363–80.
- Lochrie, Karma. *Covert Operations: The Medieval Uses of Secrecy*. Philadelphia: University of Pennsylvania Press, 1999.
- Lowe, Kathryn A., "Lay Literacy in Anglo-Saxon England and the Development of the Chirograph." In *Anglo-Saxon Manuscripts and Their Heritage*. Edited by Philip Pulsiano and Elaine M. Treharne. 161–204. Aldershot: Ashgate, 1998.
- Löwe, Heinz. *Ein literarischer Widersacher des Bonifatius, Virgil von Salzburg und die Kosmographie des Aethicus Ister*. Akademie der Wissenschaften und der Literatur [Mainz], Abhandlung der Geistes- und Sozialwissenschaftlichen Klasse, Jahrg. 1951. Wiesbaden, 1951.

- Lutterbach, Hubertus. "Die Fastenbusse im Mittelalter." In *Frömmigkeit im Mittelalter: Politisch-soziale Kontexte, visuelle Praxis, körperliche Ausdrucksformen*, edited by Klaus Schreiner. 399–437. Munich: Fink, 2002.
- . "Intentions- oder Tathaftung? Das Bußverständnis in den mittelalterlichen Bußbüchern." *Frühmittelalterliche Studien* 29 (1995): 120–43.
- . "Die Speisegesetzgebung in den mittelalterlichen Bußbüchern (600–1200): Religionsgeschichtliche Perspektiven." *Archiv für Kulturgeschichte* 80 (1998): 1–37.
- Lynch, Joseph H. *Christianizing Kinship: Ritual Sponsorship in Anglo-Saxon England*. Ithaca, NY: Cornell University Press, 1998.
- . *Godparents and Kinship in Early Medieval Europe*. Princeton, N.J.: Princeton University Press, 1986.
- Maassen, Friedrich. *Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande. Erster Band: Die Rechtssammlungen bis zur Mitte des 9. Jahrhunderts*. Graz: Leuschner und Lubensky, 1870; repr. Graz: Akademische Druck- u. Verlagsanstalt, 1956.
- McCarthy, Daniel. "The Computus and the Annals of Ulster." *Peritia* 8 (1994): 46–79.
- . *The Irish Annals: Their Genesis, Evolution and History* (Dublin: Four Courts Press, 2008).
- MacDowell, Beatriz. "Aux origines du pouvoir pastoral." *Studia Monastica* 41 (1999): 11–33.
- McGuire, Anne C. "Liturgy and Laity in the Ninth Century." *Ecclesia Orans* 13 (1996): 463–94.
- McKeon, Peter R. "Archbishop Ebbo of Reims (816–835): A Study in the Carolingian Empire and Church." *Church History* 43 (1974): 437–47.
- McKitterick, Rosamond, ed. *Carolingian Culture: Emulation and Innovation*. Cambridge and New York: Cambridge University Press, 1994.
- . *The Carolingians and the Written Word*. Cambridge and New York: Cambridge University Press, 1989.
- . *Charlemagne: The Formation of a European Identity*. Cambridge: Cambridge University Press, 2008.
- . "England and the Continent." In *The New Cambridge Medieval History, Volume II, c. 700–900*, edited by Rosamond McKitterick. 64–84. Cambridge: Cambridge University Press, 1995.
- McNamara, Martin. *The Apocrypha in the Irish Church*. [Dublin]: Dublin Institute for Advanced Studies, 1975.
- McNeill, John T. *The Celtic Penitentials and Their Influence on Continental Christianity*. Paris: Champion, 1923.
- McNeill, John Thomas, and Helena M. Gamer. *Medieval Handbooks of Penance*. New York: Columbia University Press, 1938.
- Magnou-Nortier, E. *La Société laïque et l'Eglise dans la province ecclésiastique de Narbonne de la fin du VIII^e à la fin du XI^e siècle*. Publications de l'Université de Toulouse-Le Mirail, Série A, 20. Toulouse, 1974.
- Mansfield, Mary. *The Humiliation of Sinners: Public Penance in Thirteenth-Century France*. Ithaca, NY: Cornell University Press, 1995.
- Markus, Robert. *From Augustine to Gregory the Great: History and Christianity in Late Antiquity*. Variorum Reprints. London, 1983.
- . "Gregor I, der Grosse." In *Theologische Realenzyklopädie*, vol. 14. 135–45. Berlin and New York: W. de Gruyter, 1985.
- . "From Caesarius to Boniface: Christianity and Paganism in Gaul." In *Le Septième siècle: Changements et continuités. Actes du Colloque bilatéral franco-britannique tenu au Warburg Institute les 8–9 juillet 1988/The Seventh Century: Change and Continuity. Proceedings of a Joint French and British Colloquium held at the Warburg Institute 8–9 July 1988*, edited by Jacques Fontaine and J.N. Hillgarth. 154–72. Studies of the Warburg Institute, 42. London: The Warburg Institute, 1992.

- Matter, E. Ann. "Exegesis of the Apocalypse in the Early Middle Ages." In *The Year 1000: Religious and Social Response to the Turning of the Millenium*, edited by Michael Frasseto. 29–40. New York: Palgrave, 2002.
- Matthews, J. "Roman Law and Barbarian Identity in the Late Roman West." In *Ethnicity and Culture in Late Antiquity*. Edited by Stephen Mitchell and Geoffrey Greatrex. 31–44. Cardiff and London: Classical Press of Wales, Duckworth, 2000.
- Meckler, Michael. "The *Annals of Ulster* and the Date of the Meeting at Druim Cett." *Peritia* 11 (1997): 44–52.
- Meens, Rob. "Ecclesial, Matrimonial and Political Power: The Lotharius II Affair, AD 855–869." *Revue d'Histoire Ecclésiastique* 93 (1998): 504–06.
- . "The Frequency and Nature of Early Medieval Penance." In *Handling Sin*, edited by Peter Biller and Alastair Minnis. 35–61. Woodbridge: Boydell and Brewer, 1998.
- . "Pollution in the Early Middle Ages: The Case of the Food Regulations in Penitentials." *Early Medieval Europe* 4, no. 1 (1995): 3–19.
- . "Sanctuary, Penance, and Dispute Settlement Under Charlemagne: The Conflict Between Alcuin and Theodulf of Orléans over a Sinful Cleric." *Speculum* 82 (2007): 277–300.
- Menzel, Ottokar, ed. *Das Leben der Liutbirg. Eine Quelle zur Geschichte der Sachsen in karolingischer Zeit*. Leipzig: K.W. Hiersemann, 1937.
- Moeglin, J.-M. "Pénitence publique et amende honorable au moyen âge." *Revue Historique* 298 (1997): 225–69.
- Mohr, Walter. "Karl der Große, Leo III, und der römische Aufstand von 799." *Archivum latinitatis medii aevi (Bulletin Du Cange)* 30 (1960): 39–98.
- Molland, Einar. "Ut Sapiens Medicus: Medical Vocabulary in St. Benedict's Regula Monachorum." *Studia monastica* 6 (1964): 273–96.
- Monumenta Germaniae Historica (Deutsches Institut für Erforschung des Mittelalters). *Fälschungen im Mittelalter: Internationaler Kongress der Monumenta Germaniae Historica, München, 16.–19. September 1986*. 6 vols. Monumenta Germaniae Historica, Schriften. Hanover: Hahnsche Buchhandlung, 1988.
- Moore, Sally Falk. *Law as Process: An Anthropological Approach*. London: Routledge and Kegan Paul, 1978.
- Mordek, Hubert. "Zur Handschriftlichen Überlieferung der Dacheriana." *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 47 (1967), 574–95.
- Morris, John. "The Dates of the Celtic Saints." *Journal of Theological Studies* n.s. 17 (1966): 342–91.
- Morrison, Karl. "'Unum Ex Multis': Hincmar of Rheims' Medical and Aesthetic Rationales for Unification." In Karl Morrison, *Holiness and Politics in Early Medieval Thought*. Reprinted from *Settimane di Studio* 27.2, 583–712. London: Variorum Reprints, 1981.
- Munier, Charles. "Discipline pénitentielle et droit pénal ecclésial: Alliances et différenciation." *Concilium* 107 (1975): 23–32.
- Nabert, Nathalie. "Eaux baptismales, eaux purificatrices. Étude sur le don des larmes dans la spiritualité cartusienne du XI^e au XV^e siècle." In *Dans l'eau, sous l'eau: Le monde aquatique au moyen âge*, vol. 25, edited by Danièle James-Raoul and Claude Thomasset. 357–74. Cultures et Civilisations Médiévales. Paris: Presses de l'Université de Paris-Sorbonne, 2002.
- Nagy, Piroska. *Le don des larmes au moyen âge: Un instrument spirituel en quête d'institution (V^e–XIII^e siècle)*. Paris: Albin Michel, 2000.
- Nees, Lawrence. "The Illustrated Manuscript of the Visio Baronti [Revelatio Baronti] in St. Petersburg (Russian National Library, Cod. Lat. Oct. v.I.5)." In *Court Culture in the Early Middle Ages. Proceedings of the First Alcuin Conference*, edited by Catherine Cubitt. 91–128. Studies in the Early Middle Ages, 3. Turnhout: Brepols, 2003.
- . *A Tainted Mantle: Hercules and the Classical Tradition at the Carolingian Court*. Philadelphia: University of Pennsylvania Press, 1991.

- Nehlsen, Hermann. "Der Schutz von Rechtsaufzeichnungen gegen Fälscher in den Germanenreichen." In *Fälschungen im Mittelalter. Internationaler Kongreß der Monumenta Germaniae Historica, München, 16.–19. September 1986*, vol. 33, I–V. 545–76. Schriften der Monumenta Germaniae Historica, II. Hanover: Hahnsche Buchhandlung, 1988.
- Nelson, Janet. *Politics and Ritual in Early Medieval Europe*. London and Ronceverte: Hambledon Press, 1986.
- . "Literacy in Carolingian government." In *The Uses of Literacy in Early Medieval Europe*, edited by Rosamond McKitterick. 258–96. Cambridge: Cambridge University Press, 1990.
- . "Women and the Word in the Earlier Middle Ages." *Studies in Church History* 27 (1990): 53–78.
- Neuman, S.C. and Glennis Byron, eds. *ReImagining Women: Representations of Women in Culture*. Toronto and Buffalo: University of Toronto Press, 1993.
- Newhauser, Richard. *In the Garden of Evil: The Vices and Culture in the Middle Ages*. Toronto, Ont.: Pontifical Institute of Mediaeval Studies, 2005.
- . *The Treatise on Vices and Virtues in Latin and the Vernacular*. Typologie des sources du Moyen Age occidental. Turnhout: Brepols, 1993.
- . "Zur Zweideutigkeit in der Moralthologie: Als Tugenden verkleidete Laster." In *Der Fehltritt: Vergehen und Versehen in der Vormoderne*, edited by Peter von Moos. 377–402. Norm und Struktur: Studien zum sozialen Wandel in Mittelalter und früher Neuzeit, 15. Cologne, Weimar, Vienna: Böhlau, 2001.
- Newman, Hillel I. "The Death of Jesus in the *Toledot Yeshu* Literature." *Journal of Theological Studies* n.s. 50 (1999): 59–79.
- Nicolas (pope). "Ep. 155: Ad episcopos in regno Ludovici constitutos (a. 867)." PL 119, cols. 1163–74.
- Niederkorn-Bruck, Meta, and Anton Scharer, eds. *Erzbischof Arn von Salzburg*. Veröffentlichungen des Instituts für Österreichische Geschichtsforschung, 40. Vienna and Munich: R. Oldenburg, 2004.
- Noble, Thomas F.X. *The Republic of St. Peter: The Birth of the Papal State, 680–825*. Philadelphia: University of Pennsylvania Press, 1984.
- . "Louis the Pious and the Frontiers of the Frankish Realm." In *Charlemagne's Heir. New Perspectives on the Reign of Louis the Pious (814–840)*, edited by Peter Godman and Roger Collins. 333–47. Oxford: Clarendon, 1990.
- . "The Monastic Ideal as a Model for Empire: The Case of Louis the Pious." *Revue Bénédictine* 86 (1976): 235–50.
- . "Secular sanctity: Forging an Ethos for the Carolingian Nobility." In *Lay Intellectuals in the Carolingian World*, edited by Patrick Wormald and Janet L. Nelson. 8–36. Cambridge: Cambridge University Press, 2007.
- Noizet, Hélène. "Alcuin contre Théodulphe: Un conflit producteur de normes." *Annales de Bretagne et des pays de l'Ouest* 111 (2004) [special issue: "Alcuin, de York à Tours: Écriture, pouvoir et réseaux dans l'Europe du haut Moyen Âge"]: 113–29.
- Nonn, Ulrich. "Zur Vorgeschichte der Bildungsreform Karls des Großen." In *Karl der Grosse und Sein Nachwirken: 1200 Jahre Kultur und Wissenschaft in Europa/Charlemagne and His Heritage: 1200 Years of Civilization and Science in Europe*, edited by P. Butzer, M. Kerner, and W. Oberschelp, vol. 1. 63–77. Turnhout: Brepols, 1997.
- Notker Balbulus. *Monachi Sangallensis De gestis Karoli imperatoris libri duo*. Monumenta Germaniae Historica, Scriptores 2. Hanover: [S.n.], 1829.
- . "Charlemagne." In *Two Lives of Charlemagne*, translated by Lewis G.M. Thorpe. Penguin Classics. Harmondsworth: Penguin, 1969.
- . *[Gesta Karoli Magni]: Taten Kaiser Karls des Grossen*. Edited by Hans F. Haefele. Monumenta Germaniae Historica, Scriptores rerum Germanicarum, nova series, vol. 12. Berlin, 1959; repr. Munich: Monumenta Germaniae Historica, 1980.

- Nörr, Knut Wolfgang. *Zur Stellung des Richters im gelehrten Prozess der Frühzeit: Iudex secundum allegata non secundum conscientiam iudicat*. Münchener Universitätschriften. Munich: Beck, 1967.
- Oexle, Otto Gerhard. "Die Kulture der Rebellion. Schwureinung und Verschwörung im früh- und hochmittelalterlichen Okzident." In *Ordnung und Aufruhr im Mittelalter: Historische und juristische Studien zur Rebellion*, edited by Marie Theres Fögen. 119–37. Ius Commune, Sonderhefte Studien zur Europäischen Rechtsgeschichte, 70. Frankfurt a. Main: Vittorio Klostermann, 1995.
- . "Conjuratio und Gilde im frühen Mittelalter: Ein Beitrag zum Problem der sozialgeschichtlichen Kontinuität zwischen Antike und Mittelalter." In *Gilden und Zünfte: Kaufmännische und gewerbliche Genossenschaften im frühen und hohen Mittelalter*, edited by Berent Schwineköper. 151–214. Sigmaringen: J. Thorbecke, 1985.
- . "Memoria et Memorialüberlieferung im früheren Mittelalter." *Frümittelalterliche Studien* 10 (1976): 72–79.
- Ohst, Martin. *Pflichtbeichte. Untersuchungen zum Busswesen im hohen und späten Mittelalter*. Beiträge zur Historischen Theologie. Tübingen: Mohr, 1995.
- Olson, Trisha. "Sanctuary and Penitential Rebirth in the Central Middle Ages." In *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*, edited by Anthony Musson. 38–52. Aldershot: Ashgate, 2005.
- O'Reilly, Jennifer. *Studies in the Iconography of the Virtues and Vices in the Middle Ages*. Outstanding Theses in the Fine Arts from British Universities. New York: Garland Pub., 1988.
- O'Sullivan, Sinéad. *Early Medieval Glosses on Prudentius' Psychomachia: The Weitz Tradition*. Mittellateinische Studien und Texte. Leiden and Boston: Brill, 2004.
- Ó Cróinin, Dáibhí. "Early Irish Annals from Easter Tables: A Case Restated." *Peritia* 2 (1983): 74–86.
- Ó Cuív, Brian. "Literary Creation and Irish Historical Tradition." *Proceedings of the British Academy* 49 (1963): 233–62. [Sir John Rhys Memorial Lecture.]
- Otten, Willemien. "The Texture of Tradition: The Role of the Church Fathers in Carolingian Theology." In *The Reception of the Church Fathers in the West from the Carolingians to the Maurists*, edited by Irena Backus. 2 vols. 1:3–50. Leiden, New York, Cologne: E.J. Brill, 1996.
- Palmer, James. "The 'Vigorous Rule' of Bishop Lull: Between Bonifatian Mission and Carolingian Church Control." *Early Medieval Europe* 13 (2005): 249–76.
- Parker, Robert. *Miasma: Pollution and Purification in Early Greek Religion*. Oxford: Clarendon Press, 1983.
- Parkes, James William. *The Jew in the Medieval Community: A Study of His Political and Economic Situation*. New York: Hermon Press, 1976.
- Paschasius, Radbertus. "In Threnos sive Lamentationes Ieremiae libri quinque." In PL 120, cols. 1059–1256.
- Payen, Jean-Charles. *Le motif du repentir dans la littérature français médiévale (des origines à 1230)*. Geneva: Droz, 1968.
- Payer, Pierre. *Sex and the Penitentials: The Development of a Sexual Code, 550–1150*. Toronto: University of Toronto Press, 1984.
- Peers, Glenn. *Subtle Bodies: Representing Angels in Byzantium*. Transformation of the Classical Heritage. Berkeley, Los Angeles, London: University of California Press, 2001.
- [Penitentials]. *Die Altenglische Version des Halitgar'schen Bussbuches (Sog. Poenitentiale Pseudo-Ecgberti)*. Edited by Josef Raith. Bibliothek der Angelsächsischen Prosa. Hamburg: H. Grand, 1933.
- [Penitentials]. *Die Bussbücher und die Bussdisciplin der Kirche nach handschriftlichen Quellen dargestellt*. Edited by Hermann Joseph Schmitz. Graz: Akademische Druck- u. Verlagsanstalt, 1958.

- [Penitentials]. *Die Bussordnungen der Abendländischen Kirche*. Edited by Hermann Wasserschleben. Graz: Akademische Druck- u. Verlagsanstalt, 1958.
- [Penitentials]. *The Irish Penitentials*. Edited by Ludwig Bieler. *Scriptores Latini Hiberniae*. Dublin: Dublin Institute for Advanced Studies, 1963.
- [Penitentials]. *Paenitalia minora Franciae et Italiae saeculi VIII–IX*. Edited by Ludger Körntgen, Ulrike Spengler-Reffgen, and Raymond Kottje. *Corpus Christianorum, Series Latina* 156. Turnhout: Brepols, 1994.
- [Penitentials]. *Paenitalia Franciae, Italiae et Hispaniae Saeculi VIII–XI: Paenitalia Hispaniae*. Edited by Francis Bezler, assisted by Ludger Körntgen. *Corpus Christianorum, Series Latina* 156A. Turnhout: Brepols, 1998.
- Petrus archidiaconus. "Liber de diversis quaestiunculis cum responsionibus suis." In *PL* 96, cols. 1347–62.
- Piazza, M.P. *La disciplina del falso nel diritto romano*. Pubblicazioni Della Università di Pavia. Padova: CEDAM, 1991.
- Pilsworth, Clare. "Miracles, Missionaries and Manuscripts in Eighth-Century Southern Germany." *Studies in Church History* 41 (2005): 67–76.
- Pincer, Nira. "'Crimes et châtements' monastiques: Aspects du système pénal cénobitique occidental (V^e et VI^e siècles)." *Le Moyen Age: Revue d'Histoire et de Philologie* 109 (2003): 261–75.
- Plummer, Charles. *Vitae Sanctorum Hiberniae*. 2 vols. Oxford: Clarendon Press, 1968.
- Pokorny, Rudolf. "Ein unbekannter Synodalsermo Arns von Salzburg." *Deutsches Archiv für Erforschung des Mittelalters* 39 (1983): 379–94.
- Pontal, Odette. *Histoire des conciles mérovingiens*. [Paris]: Editions du Cerf Institut de la Recherche et de histoire des textes (CNRS), 1989.
- Poschmann, Bernhard. *Busse und Letzte Oelung [Handbuch der Dogmengeschichte, vol. IV, part 3]*. Freiburg, 1951. Translated by F. Courtney into English as *Penance and the Anointing of the Sick*. [New York]: Herder and Herder, 1964.
- . *Paenitentia secunda: Die kirchliche Busse im ältesten Christentum bis Cyprian und Origenes*. Bonn: Hanstein, 1940; repr. 1964.
- [Praefationes]. *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1245*. Translated by Robert Somerville and Bruce Clark Brasington. New Haven, CT: Yale University Press, 1998.
- Prinz, Friedrich. *Frühes Mönchtum im Frankenreich. Kultur und Gesellschaft in Gallien, den Rheinlanden und Bayern am Beispiel der monastischen Entwicklung (4. bis 8. Jahrhundert) Mit einem Kartenanhang*. Wien: Oldenbourg, 1965.
- Prinz, J. "Ein unbekanntes Aktenstück zum Ehestreit König Lothars II." *Deutsches Archiv für Erforschung des Mittelalters* 21 (1965): 249–63.
- Prodi, Paolo, and Elisabeth Müller-Luckner, eds. *Glaube und Eid: Treuformeln, Glaubensbekenntnisse und Sozialdisziplinierung zwischen Mittelalter und Neuzeit*. Schriften des Historischen Kollegs. Munich: Oldenbourg, 1993.
- Pseudo-Alcuin. "De Divinis Officiis Liber." In *PL* 101, cols. 1173–1286.
- Pugliese, Giovanni. "La preuve dans le procès romain de l'époque classique." In *La Preuve. Première Partie: Antiquité*. 277–348. Recueils de la Société Jean Bodin, vols. 16–19. Brussels: Éditions de la Librairie encyclopédique, 1963.
- Rabe, Susan A. *Faith, Art, and Politics at Saint-Riquier: The Symbolic Vision of Angilbert*. Philadelphia: University of Pennsylvania Press, 1995.
- Radin, Max. "The Conscience of the Court." *Law Quarterly Review* 48 (1932): 506–20.
- Rand, Edward Kennard. *Classical and Mediaeval Studies in Honor of Edward Kennard Rand Presented Upon the Completion of His Fortieth Year of Teaching*. Edited by Leslie Webber Jones. Essay Index Reprint Series. Freeport, NY: Books for Libraries Press, 1968.
- Rapp, Claudia. *Holy Bishops in Late Antiquity: The Nature of Christian Leadership in an Age of Transition*. The Joan Palevsky Imprint in Classical Literature. Berkeley: University of California Press, 2005.

- Remensnyder, Amy. *Remembering Kings Past: Monastic Foundation Legends in Medieval Southern France*. Ithaca NY: Cornell University Press, 1996.
- Reuter, Timothy. "Assembly Politics in Western Europe from the Eighth Century to the Twelfth." In *The Medieval World*, edited by Peter Linehan and Janet L. Nelson. 432–50. London and New York: Routledge, 2001.
- . "Kirchenreform und Kirchenpolitik im Zeitalter Karl Martells: Begriffe und Wirklichkeit." In *Karl Martell in seiner Zeit*, edited by J. Jarnut, U. Nonn, and M. Richter. 35–58. Beiheft der Francia, 37. Sigmaringen, 1994.
- Reynolds, Roger E. "Canon Law Collections in Early Ninth-Century Salzburg." In *Proceedings of the Fifth International Congress of Medieval Canon Law (Salamanca, 21–25 September 1976)*. 15–34. Vatican City: Biblioteca Apostolica Vaticana, 1980.
- Reynolds, Susan. *Kingdoms and Communities in Western Europe, 900–1300*. Oxford and New York: Clarendon Press and Oxford University Press, 1997.
- . "Rationality and Collective Judgement in the Law of Western Europe Before the Twelfth Century." *Quaestiones Medii Aevi Novae* 5 (2000): 3–19.
- Riché, Pierre. *Enseignement du droit en Gaule du VI^e au XI^e siècle*. Ius Romanum Medii Aevii. Milan: Typis Giuffrè, 1965.
- Rittgers, Ronald K. *The Reformation of the Keys: Confession, Conscience, and Authority in Sixteenth-Century Germany*. Cambridge, MA, and London: Harvard University Press, 2004.
- Rochais, H.M. "Le Liber de virtutibus et vitiis d'Alcuin. Note pour l'étude des sources." *Revue Mabillon* 41 (1951): 77–86.
- Roos, John R. *The Seal of Confession*. Washington: Catholic University of America Press, 1960.
- Rosenwein, Barbara. "Inaccessible Cloisters: Gregory of Tours and Episcopal Exemption." In *The World of Gregory of Tours*, edited by Kathleen Mitchell and Ian Wood. 181–97. Leiden, Boston, Cologne: Brill Academic Publishers, 2002.
- . "Y avait-il un 'moi' au haut Moyen Age?" *Revue historique* 307 (2005): 31–52.
- Rousseau, Philip. *Ascetics, Authority, and the Church in the Age of Jerome and Cassian*. Oxford: Oxford University Press, 1978.
- Rudolf, Hans Ulrich. *Apostoli gentium: Studien zum Apostelepitheton unterbesonderer Berücksichtigung des Winfried-Bonifatius und seiner Apostelbeinamen*. Göppingen: A. Kümmerle, 1971.
- Rudolf of Fulda. "Vita Leobae Abbatissae Biscofesheimensis." Edited by G. Waitz. In *Vita Aliaeque Historiae Minores, Supplementa t. 1–12, Pars 3*. 118–31. Monumenta Germaniae Historica, Scriptores, t. 15, Pars 1. Hanover: Hahnsche Buchhandlung, 1887.
- Ruggini, Lellia Cracco. "Grégoire le Grand et le monde Byzantin." In *Grégoire le Grand. Colloques Internationaux du Centre National de la Recherche Scientifique, Chantilly, 15–19 September 1982*, edited by Jacques Fontaine, Robert Gillet, and Stan Pellestrandi. 83–94. Paris, 1986.
- Russell, Jeffrey B. "Saint Boniface and the Eccentrics." *Church History* 33 (1964): 235–47.
- Russo, François. "Pénitence et excommunication: Étude historique sur les rapports entre la théologie et le droit canon dans le domaine pénitentiel du IX^e au XIII^e siècle." *Recherches de science religieuse* 33 (1946): 257–79, 431–61.
- Safran, Janina M. "Rules of Purity and Confessional Boundaries: Maliki Debates About the Pollution of the Christian." *History of Religions* 42 (2003): 197–212.
- Samons II, Loren J. "The Vita Liutbirgae." *Classica et Mediaevalia* 43 (1992): 273–85.
- Sapir, David J. "Introduction to Part II." In *The Social Use of Metaphor: Essays on the Anthropology of Rhetoric*, edited by David J. Sapir and Christopher Crocker. 69–73. Philadelphia: University of Pennsylvania Press, 1977.
- Savigni, Raffaele. "Purità rituale e ridefinizione del sacro nella cultura carolingia: L'interpretazione del Levitico e dell'Epistola agli Ebrei." *Annali di Storia dell'esegesi* 13 (1996): 229–55.

- Scapini, Nevio. *La Confessione nel Diritto Romano*. Università di Torino, Memorie dell'Istituto giuridico, ser. 2. Turin: G. Giappichelli, 1973.
- Schieffer, Rudolf. *Die Entstehung von Domkapiteln in Deutschland*. Bonner Historische Forschungen. Bonn: Röhrscheid, 1976.
- . "Neue Bonifatius-Literatur." *Deutsches Archiv für Erforschung des Mittelalters* 63 (2007): 111–23.
- Schieffer, Theodor. *Winfrid-Bonifatius und die christliche Grundlegung Europas*. Freiburg: Herder, 1954.
- Schipperges, Stefan. *Bonifatius ac socii eius: Eine sozialgeschichtliche Untersuchung des Winfrid-Bonifatius und seines Umfeldes*. Quellen und Abhandlungen zur mittelhessischen Kirchengeschichte. Mainz: Selbstverlag der Gesellschaft für mittelhessische Kirchengeschichte, 1996.
- Schlichting, Günter. *Ein jüdisches Leben Jesu: Die verschollene Toledot-Jeschu-Fassung Tam u-mu ad; Einleitung, Text, Übersetzung, Kommentar, Motivsynopse, Bibliographie*. Tübingen: J.C.B. Mohr (Paul Siebeck), 1982.
- Schmid, K. "Waldradas Verwandtschaft in neuen Quellen." *Frühmittelalterliche Studien* 2 (1968): 128–34.
- Schmidt-Wiegand, R. "Eid und Gelöbniß. Formel und Formular im mittelalterlichen Recht." In *Recht und Schrift im Mittelalter*, edited by P. Classen. 55–90. Stuttgart: J. Thorbecke, 1977.
- Schmitz, Gerhard. "Die Reformkonzilien von 813 und die Sammlung des Benedictus Levita." *Deutsches Archiv für Erforschung des Mittelalters* 56 (2000): 1–31.
- Schofield, Ph. R. "Peasants and the Manor Court. Gossip and Litigation in a Suffolk Village at the Close of the XIIIth Cent." *Past and Present* 159 (1998): 3–42.
- Schrörs, Heinrich. *Hinkmar, Erzbischof von Reims: Sein Leben und seine Schriften*. Freiburg: Herder, 1884.
- Schüssler, Heinz Joachim. "Die fränkische Reichsteilung von Vieux-Poitiers (742) und die Reform der Kirche in den Teilreichen Karlmanns und Pippins. Zu den Grenzen der Wirksamkeit des Bonifatius." *Francia* 13 (1985): 47–112.
- La scuola nell'Occidente latino dell'Alto Medioevo*. Settimane di Studio del Centro italiano di Studi sull'alto medioevo. Spoleto: Centro italiano di Studi sull'alto medioevo, 1972.
- Sdrasale, Max. *Hinkmars von Rheims kanonistisches Gutachten über die Ehescheidung des Königs Lothar ii*. Freiburg i. Br., 1881.
- Sebastián, Santiago. "La iconografía del pecado." In *Pecado, poder y sociedad en la historia*, edited by José Jiménez Lozano (Colección de Bolsillo, 3). 63–104. Valladolid: Instituto de Historia Simancas, 1992.
- Sedulius, Scottus. *Liber de rectoribus christianis*. Edited by Sigmund Hellmann. Munich: Beck, 1906.
- Semmler, Josef. "Bonifatius, die Karolinger und 'die Franken'." In *Mönchtum, Kirche, Herrschaft, 750–1000*, edited by Dieter R. Bauer, Rudolf Hiestand, Brigitte Kasten, and Sönke Lorenz. 3–50. Sigmaringen: J. Thorbecke, 1998.
- . "Episcopi Potestas und Karolingische Klosterpolitik." *Vorträge und Forschungen* 20 (1974): 305–95.
- Silver, Abba Hillel. *A History of Messianic Speculation in Israel from the First Through the Seventeenth Centuries*. New York: Macmillan Company, 1927.
- Silverstein, Theodore. *Visio Sancti Pauli: The History of the Apocalypse in Latin, Together with Nine Texts*. Studies and Documents. London: Christophers, 1935.
- Silvestre, H., J. Lemaire, and E. Van Valberghe, eds. "Notes sur les manuscrits de Bruxelles du 'De Conflictu vitiorum atque virtutum' d'Ambroise Autpert." In *Calames et Cahiers. Mélanges de codicologie et de paléographie offerts à Léon Gilissen*, vol. 9. Les Publications de Scriptorium. Brussels: Centre d'études des manuscrits, 1985.

- Simon, Marcel. *Verus Israel: A Study of the Relations Between Christians and Jews in the Roman Empire, 135–425*. Translated by H. McKeating. Oxford and New York: Published for the Littman Library by Oxford University Press, 1986.
- Sinatti D'Amico, F. *Le Prove Giudiziarie nel Diritto Longobardo: Legislazione e Prassi da Rotari ad Astolfo*. Fondazione Guglielmo Castelli, 40. Milan: Giuffrè, 1968.
- Sivan, H. "Le Corps d'une pécheresse, le prix de la piété. La Politique de l'adultère dans l'Antiquité tardive." *Annales* 53 (1998): 231–53.
- Smail, Daniel Lord. *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423*. Ithaca, NY, and London: Cornell University Press, 2003.
- Smalley, Beryl. *The Study of the Bible in the Middle Ages*. Notre Dame, IN: University of Notre Dame Press, 1964.
- Smith, Julia M.H. *Province and Empire: Brittany and the Carolingians*. Cambridge Studies in Medieval Life and Thought. Cambridge [England] and New York: Cambridge University Press, 1992.
- Smith, Lacey Baldwin. "A Matter of Conscience." In *Action and Conviction in Early Modern Europe: Essays in Memory of E.H. Harbison*, edited by Theodore K. Rabb and Jerrold E. Seigel. 32–51. Princeton, NJ: Princeton University Press, 1969.
- Staab, F. *Untersuchungen zur Gesellschaft am Mittelrhein in der Karolingerzeit*. Geschichtliche Landeskunde, 11. Wiesbaden: Franz Steiner, 1975.
- Stein, Peter. *Legal Institutions: The Development of Dispute Settlement*. London: Butterworths, 1984.
- Stemberger, Günter. "Jerusalem in the Early Seventh Century: Hopes and Aspirations of Christians and Jews." In *Jerusalem: Its Sanctity and Centrality to Judaism, Christianity, and Islam*, edited by Lee I. Levine. 260–72. New York: Continuum, 1999.
- . "Jüdische Apokalyptik in Spätantike und Mittelalter." *Jahrbuch der Oswald von Wolkenstein-Gesellschaft* 13 (2002): 11–28.
- Sterk, Andrea. *Renouncing the World Yet Leading the Church: The Monk-Bishop in Late Antiquity*. Cambridge, MA, and London: Harvard University Press, 2004.
- Stevens, Wesley M. "[Review of Kurt Hillkowitz, *Zur Kosmographie des Aethicus*]." *Speculum* 51 (1976): 752–55.
- Stevenson, Jane. *Women Latin Poets: Language, Gender, and Authority, from Antiquity to the Eighteenth Century*. Oxford [England] and New York: Oxford University Press, 2005.
- Stiegemann, Christoph, and Matthias Wemhof, eds. 799, *Kunst und Kultur der Karolingerzeit: Karl der Grosse und Papst Leo III. in Paderborn*. Mainz: P. von Zabern, 1999.
- Stock, Brian. *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries*. Princeton, NJ: Princeton University Press, 1983.
- Stocking, Rachel. *Bishops, Councils, and Consensus in the Visigothic Kingdom, 589–633*. Ann Arbor: University of Michigan Press, 2000.
- Stratmann, Martina. *Hinkmar von Reims als Verwalter von Bistum und Kirchenprovinz*. Quellen und Forschungen zum Recht im Mittelalter. Sigmaringen: J. Thorbecke, 1991.
- Straw, Carole Ellen. *Gregory the Great: Perfection in Imperfection*. Transformation of the Classical Heritage. Berkeley: University of California Press, 1988.
- Stürner, Wolfgang. *Peccatum et Potestas: Der Sündenfall und die Entstehung der Herrscherlichen Gewalt im mittelalterlichen Staatsdenken*. Sigmaringen: J. Thorbecke, 1987.
- Talbot, C.H., ed. and trans. *The Anglo-Saxon Missionaries in Germany; Being the Lives of SS. Willibrord, Boniface, Sturm, Leoba, and Libuin, Together with the Hodoeporicon of St. Willibald and a Selection from the Correspondence of St. Boniface*. New York: Sheed and Ward, 1954.

- Tanner, Norman P. *Decrees of the Ecumenical Councils*. Edited by Norman P. Tanner. London and Washington, DC: Sheed & Ward and Georgetown University Press, 1990.
- Teetaert, Amédée. *La confession aux laïques dans l'église latine depuis le VIII^e jusqu'au XIV^e siècle: Étude de théologie positive*. Wetteren and Paris: J. de Meester et fils; J. Gabalda, 1926.
- Tentler, Thomas N. *Sin and Confession on the Eve of the Reformation*. Princeton, NJ: Princeton University Press, 1977.
- Tertullian. *Adversus Iudaeos*. Edited by Hermann Tränkle. Wiesbaden: Franz Steiner, 1964.
- Theiner, August. *Disquisitiones Criticae in praecipuas canonum et decretalium collectiones seu Sylloges Gallandianae dissertationum de vetustis canonum collectionibus continuatio*. Rome, 1836.
- Thesaurus Sancti Gregorii Magni*. Corpus Christianorum, Series Latina. Turnhout: Brepols (CETEDOC), 1986.
- Theuvs, F., Mayke de Jong, and Carine van Rhijn, eds. *Topographies of Power in the Early Middle Ages*. Transformation of the Roman World. Leiden: Brill, 2001.
- Thomas of Chobham. *Summa Confessorum*. Edited by F. Broomfield. Analecta Mediaevalia Namurcensia, 25. Louvain and Paris: Éditions Nauwelaerts, 1968.
- Thomas, Yan. "Confessus pro iudicato: L'aveu civil et l'aveu pénal à Rome." In *L'Aveu: Antiquité et moyen-âge. Actes de la table ronde organisée par l'école française de Rome avec le concours du CNRS et de l'Université de Trieste, Rome 28–30 mars 1984*. 89–117. Collection de l'École Française de Rome. [Rome] Paris: École française de Rome: Diffusion de Boccard, 1986.
- Tierney, Brian. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625*. Emory University Studies in Law and Religion. Atlanta, GA: Scholars Press, 1997.
- . *Medieval Poor Law: A Sketch of Canonical Theory and Its Application in England*. Berkeley: University of California Press, 1959.
- Treffort, Cécile. *L'Église Carolingienne et la mort: Christianisme, rites funéraires et pratiques commémoratives*. Collection d'Histoire et d'Archeologie Médiévales 3. Lyon: Presses universitaires de Lyon, 1996.
- Uhalde, Kevin. *Expectations of Justice in the Age of Augustine*. Philadelphia: University of Pennsylvania Press, 2007.
- Ulrich, Jörg. *Die Anfänge der abendländischen Rezeption des Nizānums*. Patristische Texte und Studien. Berlin and New York: W. de Gruyter, 1994.
- van Caenegem, Raoul C. *An Historical Introduction to Private Law*. Translated by D.E.L. Johnston. Cambridge: Cambridge University Press, 1992.
- . "La preuve dans le droit du moyen âge occidental: Rapport de synthèse." In *La Preuve. Deuxième Partie. Moyen âge et temps modernes*. 691–753. Recueils de la Société Jean Bodin pour l'Histoire Comparative des Institutions, 17. Brussels: Editions de la librairie encyclopedique, 1965.
- van Houts, Elisabeth. "Gender and Authority of Oral Witnesses in Europe (800–1300)." *Transactions of the Royal Historical Society* (1999): 201–20.
- van Moos, Peter. "Gottshalks Gedicht *O mi custos*: Eine confessio." *Frühmittelalterliche Studien* 4 (1970): 201–30.
- Vielhaber, Klaus. *Gottschalk der Sachse*. Bonner historische Forschungen, 5. Bonn: L. Röhrscheid, 1956.
- Vodola, Elisabeth. *Excommunication in the Middle Ages*. Berkeley: University of California Press, 1986.
- Vogel, Cyrille. *En rémission des péchés: Recherches sur les systèmes pénitentiels dans l'Eglise latine*, edited by Alexandre Faivre. Aldershot, Hampshire, and Brookfield, VT: Variorum Ashgate Pub. Co., 1994.
- Wadstein, E. *Die Eschatologische Ideengruppe: Antichrist—Weltsabbat—Weltende und Weltgericht*. Leipzig: O.R. Reisland, 1896.

- Walafrid Strabo. "Comm. Epistola II Ad Corinthos." In PL 114, cols. 551–70.
- . "Comm. in Epistola Ad Hebreos." In PL 114, cols. 643–70.
- . "Comm. in Epistola I Beatis Iohannis." In PL 114, cols. 693–704.
- . "Evangelium secundum Iohannem." In PL 114, cols. 355–426.
- Wallace-Hadrill, J.M. "A Background to St. Boniface's Mission." In *England Before the Conquest: Studies in Primary Sources Presented to Dorothy Whitelock*, edited by Peter Clemoes and Kathleen Hughes. 35–48. Cambridge: Cambridge University Press, 1971.
- Wallach, Liutpold. *Alcuin and Charlemagne*, 1959.
- . "Alcuin on Virtues and Vices: A Manual for a Carolingian Soldier." *Harvard Theological Review* 48 (1955): 175–95.
- . "The Genuine and Forged Oath of Pope Leo III." In *Diplomatic Studies in Latin and Greek Documents from the Carolingian Age*. 299–327 (cf. 295–97). [Orig. published in *Traditio* 11 (1955)]. Ithaca, NY: Cornell University Press, 1977.
- Wasselynyck, R. "Les compilations des *Moralia* in *Job* du VII^e au XII^e siècle." *Recherches de Théologie ancienne et médiévale* 29 (1962): 5–32.
- . "L'Influence de l'exégèse de s. Grégoire le Grand sur les commentaires bibliques médiévaux." *Recherches de Théologie ancienne et médiévale* 32 (1965): 157–205.
- . "Présence de s. Grégoire le Grand dans les recueils canoniques (X–XII siècles)." *Mélanges de science religieuse* 22 (1965): 205–19.
- Wasserschleben, Hermann (F.W.H.). *Die Bußordnungen der abendländischen Kirche*. Graz: Akademische Druck- u. Verlagsanstalt, 1851; repr. 1958.
- Weber, Leonhard. *Hauptfragen der Moraltheologie Gregors des Grossen*. Freiburg in der Schweiz, 1947.
- Wemple, Suzanne Fonay. "Late Ninth-Century Saints Hathumoda and Liutberga." In *The Joy of Learning and the Love of God: Studies in Honor of Jean Leclercq*, edited by E. Rozanne Elder. 33–47. Cistercian Studies Series, 160. Kalamazoo, Michigan: Cistercian Publications, 1995.
- . *Women in Frankish Society: Marriage and the Cloister, 500 to 900*. Middle Ages Series. Philadelphia: University of Pennsylvania Press, 1981.
- Werkmüller, Dieter. "Per pugnam probare: Zum Beweisrecht im fränkischen Prozeß." In *Überlieferung, Bewahrung und Gestaltung in der rechtsgeschichtlichen Forschung*. 379–90. Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, neue folge, 69. Paderborn: Ferdinand Schöningh, 1993.
- Weyrauch, Walter O., ed. *Gypsy Law: Romani Legal Traditions and Culture*. Berkeley, Los Angeles, London: University of California Press, 2001.
- White, Stephen. "Proposing the Ordeal and Avoiding It: Strategy and Power in Western French Litigation, 1050–1110." In *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, edited by Thomas N. Bisson. 89–123. Philadelphia: University of Pennsylvania Press, 1995. Repr. in [Stephen D. White] *Feuding and Peace-making in eleventh-century France*. Aldershot: Ashgate, 2005.
- Wieland, Gernot. "Aldhelm's *De octo vitiis principalibus* and Prudentius' *Psychomachia*." *Medium Aevum* 55 (1986): 85–92.
- Wolfram, Herwig. "Arn von Salzburg (785/98–821). Salzburgs erster Erzbischof." In *Lebensbilder Salzburger Erzbischöfe aus zwölf Jahrhunderten: 1200 Jahre Erzbistum Salzburg*, edited by Peter F. Kramml and Alfred Stefan Weiss. 9–22. Salzburg Archiv, 24. Salzburg: Eigenverl. des Vereines, 1998.
- Wood, Ian. "Administration, Law and Culture in Merovingian Gaul." In *The Uses of Literacy in Early Medieval Europe*, edited by Rosamond McKitterick. 63–81. Cambridge: Cambridge University Press, 1990.
- . "Before or After Mission: Social Relations Across the Middle and Lower Rhine in the Seventh and Eighth Centuries." In *The Long Eighth Century*, edited by Inge Lyse Hansen and Chris Wickham. 149–66. Leiden, Boston, Cologne: Brill Academic Publishers, 2000.

- . "Disputes in Late Fifth- and Sixth-Century Gaul: Some Problems." In *The Settlement of Disputes in Early Medieval Europe*, edited by Wendy Davies and Paul Fouracre. 7–22. Cambridge: Cambridge University Press, 1986.
- . "Incest, Law and the Bible in Sixth-Century Gaul." *Early Medieval Europe* 7 (1998): 291–303.
- Wooding, Jonathan M. *The Otherworld Voyage in Early Irish Literature: An Anthology of Criticism*. Dublin and Portland, OR: Four Courts Press, 2000.
- Wormald, Patrick. *Legal Culture in the Early Medieval West: Law as Text, Image, and Experience*. London and Rio Grande: Hambledon Press, 1999.
- . *The Making of English Law: King Alfred to the Twelfth Century*. Oxford and Malden, MA: Blackwell Publishers, 1999.
- Zeddies, Nicole. "Bonifatius und zwei nütliche Rebellion: Die Häretiker Aldebert und Clemens." In *Ordnung und Aufruhr im Mittelalter: Historische und juristische Studien zur Rebellion*. 217–63. Ius Commune, Sonderhefte: Studien zur Europäischen Rechtsgeschichte 70. Frankfurt am Main: Vittorio Klostermann, 1995.

INDEX LOCORUM

- Aachen 14–15, 28, 30, 37, 195n103, 219
 Alemannia 128, 154, 176–77, 182, 190
 Alexandria 230
 Aniane 167
 Aquileia 167, 215
 Aquitaine 97, 199n114
 Arles 138, 196, 212
 Ascheim 183–85, 194n103
 Austrasia 114, 119, 122
 Auxerre 174

 Babylon 48
 Bamberg 161, 163, 165, 170, 172, 176
 Bavaria 114, 118, 119n17, 128, 144, 146, 176–78, 182–88, 190, 193–94, 196, 214n16
 Beauvais 87
 Benediktbeuern 178
 Beziers 147
 Bischofsheim 77
 Brittany, Breton 167, 190, 199

 Capua 178
 Celtic regions 66–67, 120
 Cologne 14, 128, 196

 Danube 129, 191, 192n97, 215
 Dingolfing: see under Council (*Index rerum*) 186

 Francia 10, 71, 111, 113, 115, 116n10, 117, 119, 121, 128n49, 135, 139, 143, 167, 177, 187
 Freising 186, 194n103
 Friesland 153
 Fulda 141, 154, 161n2, 174, 190n88, 223

 Gandersheim 225
 Gaul 121, 147, 198
 Germany 117n13, 186

 Hesse 118, 162–63

 Jerusalem 143, 149–51, 153, 216

 Langres 138, 204n127
 Laon 176
 Le Mans 199
 Lyon(s) 49, 83, 111, 135–39, 142, 146–48, 216

 Mainz 77, 111, 114, 130, 154, 174, 195–98
 Metz 174, 181

 Neustria 199

 Orléans 12n5, 57n112, 90n76, 146, 167, 173, 174n44, 187, 195n103, 199–200, 204n127

 Ratisbonne 186
 Rheims 10, 13–14, 40, 106n117, 123, 167, 176, 196, 210–11, 213
 Rhine, Rhineland 117n13, 161, 174, 176, 178, 198
 Rome 66, 115, 122–23, 129–30, 133n66, 135–36, 143, 149
 Rouen 123, 199n112

 Salzburg 144, 186–87, 190n88, 193n100, 194, 200, 215
 Saxony 114, 120, 124, 127, 146, 159, 161, 190, 214n16, 222
 Sens 123
 Soissons 114
 Spain 71, 88, 89n72, 153n126, 154
 St.-Amand 187
 St.-Michel 143, 174n42
 St-Mihiel 167

 Thuringia 114, 118, 124, 127
 Toledo: see also Councils of (*Index rerum*) 154
 Tours 187, 196, 199nn112 and 113
 Troyes 138, 153

 Utrecht 128

 York 131

INDEX PERSONARUM

- Abdenego: see Daniel 3:8–97 (Index Scripturarum)
- Abgar: see “Letter from Heaven” (Index rerum) 146
- Abraham 216–17
- Adalbert 114–17, 120, 129, 134–35, 139–43, 146, 201n117
- Adventius 29
- Aethicus Ister 144
- Agatha 79–80
- Agilolfings 118
- Agobard, bp. of Lyon 49, 83–86, 88, 89n72, 136–39, 146–48, 190, 216–17
- Alcuin 12n5, 167, 173–74, 187, 191, 194, 199, 202n121, 206, 214, 219; Pseudo-Alcuin 204n127,
- Amalarius 174
- Ambrose, St. 43
- Ambrosius Autpertus 167, 178–79, 186
- Amulo, bp. of Lyon 83–87, 89–96, 100, 136–39, 146–54, 216–18
- Apollinaris, bp. of Valens 138
- Armilus: see also Antichrist 150
- Arno, archbp. of Salzburg 185n72, 187–88, 191–95, 215
- Augustine, St. 132, 171
- Avitus, bp. of Vienne 138
- Bede 42, 120, 202n122
- Benedict of Aniane 167
- Bodo 153
- Boniface, bp. of Mainz 113–36, 139, 141–44, 146, 155n137, 181, 186
- Caesarius of Arles 138
- Calvin, John 208
- Carloman 114, 129, 132, 155n137
- Cassian, John 168
- Celestine, pope 104, 105n115
- Cephas 134
- Cerinthus 137
- Charlemagne 11, 12n5, 13, 34n55, 81–82, 111, 133n66, 143, 146, 159, 182–83, 186–88, 191, 195n104, 196–99, 214–15
- Charles Martel 117–18
- Charles the Bald 83–84, 138, 199
- Christ: see also Jesus 18, 45–46, 85, 88, 91, 93–95, 102, 104–7, 132, 143, 146–48, 150, 172, 179n58, 196–97, 206n132, 224
- Chrodegang, bp. of Mainz 181
- Clement 115, 117, 129
- Columbanus 120
- Cuthbert, archbp. of Canterbury 130
- Daniel: biblical character 44, 46, 49
- Daniel, bp. of Winchester 128, 134, 141
- David: biblical character 56, 108
- Donatus 218
- Ebo, bp. of Rheims 40
- Egbert, archbp. of York 120, 131; Pseudo-Egbert 72n22, 74n28, 77n35, 202n122
- Egil (Eigil), abbot of Prüm 29
- Florus, deacon of Lyon 83–84, 89n72, 138
- Franks 114, 121, 124, 125n38, 129, 131–32, 199n114
- Gewilip (of Mainz) 130
- Gog: see also Magog 150–51
- Gregory, bp. of Langres 138
- Gregory II 116n11, 117–19, 123n28, 133
- Gregory III 118–19, 127–28
- Gregory the Great 41n75, 94n86, 95n87, 98–99, 106–8, 120n19, 122, 123n24, 129, 138, 139n78, 168, 174–75, 179n58, 182, 193, 200, 206, 210, 219–20
- Gunthar, archbp. of Cologne 23–24, 26–29
- Hagar: see Gen. 21:1–21 (Index Scripturarum)
- Haimo of Auxerre 174
- Herod: see Matt. 14:9 (Index Scripturarum)
- Hildibald, emperor’s chaplain 196
- Hincmar, archbp. of Rheims 10–11, 13–17, 20–21, 23n29, 26–27, 29–30,

- 32, 36–47, 49–52, 56–59, 63, 106n117,
167, 175–76, 213
Hrabanus Maurus, ab. Fulda 77,
94–96, 100, 109, 174
Hrotsvitha, canoness of Gandersheim
224–25, 229n54, 230–32
- Icore 143
Irenaeus, bp. of Lyon 137–38
Isaac: see Gen. 21:1–21 (Index
Scripturarum)
Ishmael: see Gen. 21:1–21 (Index
Scripturarum)
Isidore of Seville 99, 138, 182
- James, apostle 164
Jerome 86–87, 95n87, 182
Jesus 87, 91–92, 104, 136, 147–48,
151–52, 173, 197
John, apostle 86, 137–38
John Cassian 168
John the Baptist 42
Jonas, bp. of Orléans 167, 173,
174n44
Josue ben Levi 149–150
Judah 216
Judas 42, 147–48
Judith (empress) 64n3, 138
Julian of Toledo 154
Julianus Pomerius 97–99, 101, 138–39,
169, 181–82, 200, 219
Justinian 109, 110n130
- Lantfrid (Landfrid), ab. Benediktbeuren
178, 186
Leo the Great (pope) 39, 57, 110
Leoba, abbess of Bischofsheim 77, 80–81
Liutberga 161–65, 170–73, 176–79,
208, 223–25
Lothar II, king 13–15, 16n14, 18–20,
22, 24n31, 25, 27–32, 34, 37, 42, 52,
63, 64n3, 80, 214
Louis the Pious 46n88, 138, 194n103
Lupus, bp. of Troyes 138
- Mary Magdalene 108, 179n58
Messiah ben David 149–50, 153
Messiah ben Ephraim 150–51
Messiah ben Ioseph 150
Misac: see Daniel 3:8–97 (Index
Scripturarum)
- Nabal: see 1 Kings 25:22–35 (Index
Scripturarum)
- Nicolas, pope 18n18, 32
Nothelm, archbp. of Canterbury
121–22
Notker “the Stammerer” 81–82
- Odilo, duke of Bavaria 144
- Paphnutius 225–32
Paul, apostle 43, 49, 217
Paul Alvarus 153
Paulinus of Aquileia 167, 215
Peter, apostle 103, 108, 116, 125, 143,
197
Pharaoh 42, 50
Pippin 114
Polycarp 138
Priscus 138
Prosper of Aquitaine 97
Prudentius 153, 176–77, 179, 182
- Rudolf: of Mainz 77–81, 96
- Sara: see Gen. 21:1–21 (Index
Scripturarum)
Sedulius Scottus 167
Smaragdus 167, 174n42
Saul: see 1 Kings 16:1–7 (Index
Scripturarum)
Solomon, bishop 154
Susannah: see Daniel 13 (Index
Scripturarum)
- Tassilo, duke of Bavaria 183–86, 189,
194
Thaïs 224–33
Theoda, prophetess 139, 154
Theodulf, bishop of Orléans 12n5,
57n112, 146, 187, 199–200,
212n7
Theutberga, queen 13–37, 39, 41–44,
52, 57–61, 63, 80, 95–96, 99, 101, 138,
159, 161, 163, 175, 230, 233
Theutgaud, bishop 29
Thomas of Chobham 34n55
- Virgil, bp. of Salzburg 144, 186,
190n88
Viventius, bp. of Lyon 138
- Wido, count of Breton march 167, 199
Wiwilo, bp. 127
- Zacharias, pope 123–32, 141, 144
Zaccheus 108

INDEX RERUM

- absolution 38–39, 46–47, 116, 120, 134, 155, 169, 202, 225
- abstinence 204, 223
- abuse of power: (see also coercion) 37, 52, 183, 225, 233
- acceptance [consideration] of person [in law] 202
- accusation: (see also charge, legal) 14, 22, 38–39, 42, 44–48, 52, 60, 78–81, 96, 104, 127, 133, 141, 144, 153, 174–75, 178
- accuser 43, 45, 51–52, 172–76, 201
- act, criminal or penitential 40
- act, criminal or sinful 14, 29, 51, 59, 64, 70, 75–76, 83, 100, 127, 172, 188, 207, 211, 213
- act, penitential or redemptive 78, 80, 88, 97, 112, 150, 177, 232
- action, legal 9–10, 12, 36, 59, 63, 68, 76, 95, 111, 125, 226
- adjudication 20, 41, 60, 64, 97, 100, 183, 201, 203, 212–13
- Adoptionism 93, 94n85
- adultery 44–47, 64n3, 127, 129–30, 132, 134, 155n137, 166, 179n58
- Adversus Iudaeos* 83–93, 137–149
- advocate 17, 23, 103, 175, 180, 231
- affliction: see also suffering 106, 149, 188; “righteous”: see also coercion 217
- agency 32, 82, 100
- allegory 87, 92, 94–95, 179, 193
- alms 77, 172, 189, 205
- altar 34n55, 102
- amulet 144
- analogy (juridical) 40, 95, 98, 110
- anchoress 170
- angel 27, 30, 34n55, 37, 45, 48, 102, 140, 142–45, 147, 217, 229
- angelology 142, 144n96
- anger (vice): see also vices 108, 171, 227, 231
- animal: (see also bird) 71–72, 74, 75n31, 94, 95n87, 134, 155n137, 207;—, bees 72, 74; creature 72–75, 229;— crocodile 69;—, pig(s), piglet(s) 71;—, deer 72, 74;—, dog 72, 75n31;—, fox 74;—, goat(s) 72, 74, 134;—, pig(s), piglet(s) 72–73;—, rabbit 72;—, see also mouse;—, weasel 63, 69;—, wolf 71
- Annals of Fulda 154
- anthropomorphism 147
- Antichrist 88, 93–94, 115, 150, 152
- Apocalypse, apocalypticism 85n59, 86–89, 93, 114–15, 142n89, 144n98, 145, 149–51, 153, 155
- Apocrypha 142, 145n100
- apostle(s) 102, 116, 121, 138
- appeal (legal) 49, 83, 115, 135, 147, 184, 233
- aqueduct 147
- archbishop (office): see otherwise individual names 124, 130
- ark 134
- ascetic, asceticism 113, 169, 182, 200–201, 204, 207–8, 220, 222–23, 225, 228, 231
- assembly: see also council 14, 16n13, 17, 30, 36, 133, 183n68, 185–86n74, 211
- asylum 12
- atonement 11, 60, 81, 96, 157, 162, 222
- audience 42, 69, 73, 82, 85, 94, 116, 123n28, 135–36, 188, 224, 228, 231
- audientia episcopalis 46n88
- authority 27, 61, 110, 112, 115, 121, 126, 128, 133, 156, 158–59, 161, 169–70, 172, 177–78, 183–84, 191, 198, 201, 208–10, 212–15, 217, 220, 224–26, 228, 230–32; of assembly 30, 156; comital 164–65, 170; of confessor 203; of conscience 37; ecclesiastical;—, usurped by laity 88; ecclesiastical 117, 172, 184, 197, 216; episcopal 19, 26, 114, 117, 120, 123, 125–27, 136, 156, 165, 210, 219; imperial 159, 195, 199; institutional 68, 113, 192, 197, 232; judicial 47, 159, 162, 170, 182, 199, 202, 210; juridical 157; jurisdictional 30, 196; legal 231; legal and penitential 29;

- metropolitan 118, 125, 130, 135;
moral 127, 182, 231–33; papal 123,
125–27, 129; pastoral 111, 135, 219;
patristic 93, 137, 139; Petrine 116,
125; preaching;—, see also pastoral
156; priestly 210, 218; public 68;
royal 27–28, 31, 38, 125; secular
34, 132, 162; spiritual 178; synodal
129; teaching;—, see also pastoral
140, 182; textual 62, 66, 68, 71, 122,
138–39, 143, 201, 203, 205, 210, 225,
232
- autograph: see chyrograph 33
- autonomy 25, 29, 68, 125, 159, 182–83,
190, 221–22, 231, 233
- avarice (vice): see also vices 171,
177n53
- baby, babies 77–78, 81, 131
- baptism 41, 79, 88, 102, 105, 124, 131,
155, 157, 214–15
- basilicas 212
- baths, bathing 44, 81, 85, 135, 137,
198, 207
- bed 18, 229, 233
- bedchamber 60
- beer 74
- belief, beliefs 9–10, 62–63, 65, 70,
76, 83, 94n85, 96–97, 131, 135–37,
140–44, 146–47, 153–54, 156–57, 205,
209, 232–34
- Benedictine Rule 167
- benedictions 48
- bible, biblical reference: see also
Scriptural citation 11, 25, 44, 47,
51, 59n116, 62, 74, 76, 84, 110, 133,
135, 137, 139, 151, 168, 172–73, 176,
179n58, 184, 193, 197–98, 200–201,
206, 215
- bird: see also animal 72;—, hen
72–73, 75n31; vulture 75n31
- bishop 10–11, 22–23, 38, 40, 46, 49,
83, 90, 115, 117, 121, 123, 125–28,
130, 132, 134, 137–38, 141, 144, 147,
154, 166n14, 169n25, 170–73, 176,
182n67, 186n75, 187, 192, 194, 199,
210, 212–13, 224
- bishopric 117n13, 126, 128, 138n76,
182, 199
- bishops 12n5, 14, 16–31, 34, 36–39, 41,
45, 46n88, 62, 65, 68, 80, 87–88, 99,
111–12, 114–15, 117–18, 120, 123–24,
126–28, 130, 132–33, 135, 137–39,
141–42, 148, 155, 159, 165, 166n14,
168, 170, 180, 182, 185–86, 190–92,
196, 201, 203, 208, 210–11, 216,
218–20, 225, 233
- blasphemy 83, 87, 96, 147, 217
- blood 63, 68, 71–74, 75n31, 82,
84–85, 92–93, 102, 107, 127, 132, 136,
152n123, 171, 226; bloodless 74
- blush: as sign of shame 35, 58, 101,
192
- body, bodies: authority over 40, 177,
217; of Christ 85, 88, 91, 93–94,
147;—, see also Eucharist 102;
ecclesiological image 41, 85, 88, 93;
of God 147; heart and body 18; of
hidden Messiah 149; sins of 202;
site of religious meaning 14, 28, 48,
85, 88, 93–94, 98, 101, 106, 132, 169,
203, 205, 230;—, see also corpse
91;—, see also medicine
- bonfire of the vanities 230
- boundary stones 215
- bread: see also Eucharist 74n28, 132,
179n59
- bribes, bribery 20, 184
- burial 34n55, 51, 74, 91, 148, 229
- cabbage 148
- calumny 184
- candles 189
- canon law 11, 18n18, 39–40, 43,
44n83, 57n111, 63n2, 65–66, 69–74,
76–77, 83–84, 88–89, 96, 104n113,
105n115, 117, 120–26, 128n49,
129n51, 131, 136, 138, 162, 164,
169n25, 170, 181, 183–85, 194,
195nn103–104, 199–207, 211–13,
226n45
- canonical norms 21, 26, 123, 125,
127–28, 133n66, 164–65, 170, 172,
207, 210, 214–15
- canonical texts: see extra-canonical
traditions 21, 26, 123, 125, 127–28,
141, 145–46, 151–52, 156, 164–65,
172, 207, 210, 214–15, 233
- capitularies, episcopal 57n110, 191,
194n103, 195n104, 200
- Capitularium de partibus Saxoniae* 191
- carriion: see also corpse 72–74
- cartulam 34
- case, legal 10, 12–14, 16–18, 22, 23n28,
24n29, 26–29, 31, 33, 38, 40, 43–46,
49, 51, 56–61, 64n3, 70, 73, 75, 80, 83,
91n80, 96–97, 107, 111–12, 114–16,
121, 128–30, 138–39, 148, 153n126,

- 161, 163, 169, 175, 192, 195, 197, 207, 219n27, 230
- cathedral canons 181
- celibacy: see also chastity 40
- chaplain, court 14, 173, 196
- charge, legal: see also accusation 21, 24–25, 48, 60–61, 79–80, 96, 115, 133, 140, 143–44, 154, 208, 226, 232
- chastity 78–79, 188, 230
- child, children 13–14, 79–80, 92, 121, 150, 162, 203n122, 207, 216, 223n38
- childbirth 74, 79, 99, 144
- Christianisation 10n2, 11, 60, 62, 97, 110, 118n15, 155, 222, 232
- Christians 38, 41, 46, 83, 85, 87n67, 89n72, 90, 93, 96, 98, 111–12, 133, 136–39, 147–50, 154, 156, 162, 178, 216, 222, 232
- Church 46, 67, 71, 85, 93, 94n85, 116n10, 117, 118n14, 120, 122–24, 127, 129–30, 132–34, 136n72, 139, 145, 154, 155n136, 156, 173, 183, 185–86, 189, 191–93, 195n99, 196–97, 199n104, 201, 214, 216–18
- churches 65n6, 115, 117n13, 118, 126, 129, 139, 155n137
- chyrograph 33, 35
- citation (for support of argument) 10, 17, 24n30, 26, 29–30, 37, 43–44, 57n111, 63, 68, 84, 86, 88–89, 100n98, 105, 120n19, 125, 137–39, 151, 171n30, 173, 174nn42–44, 175–76, 181, 185, 195n104, 197–98, 200n115, 201–2, 204n127, 205, 207n133, 211, 215n19, 216, 217n25, 218n26, 219, 227
- civil (law or process) 12, 40–41, 60, 222
- clean: see also pollution 21, 63, 72n23, 74, 81, 86, 95, 102, 108, 134
- cleansing: ablution 41, 108
- cleansing of sin: see also purgation 74, 87, 97, 99, 108
- clergy 27, 33, 38, 40–41, 45, 71–72, 93, 101–2, 110, 114, 117–18, 120, 124, 126–35, 140–41, 146n103, 154–56, 159, 165–66, 169–70, 173–75, 180, 182–83, 185–88, 195–96, 198–99, 201, 206–10, 213, 214n16, 215–16, 220–21, 223, 229–32
- codes: penal 220; pollution;—, Jewish 91, 93–94; social 68
- coercion: see also abuse of power 20–21, 26, 31, 35, 88, 114, 123n28, 157, 159, 162, 191–92, 209, 213–15, 217–19, 225, 233
- comets 153
- commentary (on bible): see exegesis 86, 94, 175
- community, communal 10, 31, 38, 64–65, 68, 71, 76, 79–80, 89n73, 93–95, 140, 157–58, 166, 169, 172, 181, 188–92, 195–97, 220, 222
- compassion 18, 85, 191, 202, 208
- compensation 96, 180, 220–21
- complaint: see also accusation 25, 117, 139, 155
- compurgation: see also oath 56, 68
- conciliar forum or legislation: see also particular councils 37, 84, 87–88, 114, 138, 182–83, 185, 187, 191, 194, 195n104, 196–97, 204, 208
- condemnation 16n14, 40n73, 42, 45–47, 49, 104, 114, 116, 129, 135, 143, 146–47, 154, 157, 213, 219
- confessant 17, 20–21, 28, 56n107, 208, 230
- confession 10–12, 14–24, 26–43, 45–50, 56–59, 65, 80–81, 96–99, 101–5, 107–8, 112, 116–17, 120, 132, 135, 144, 155, 157, 159, 161, 163, 166, 169–70, 172–76, 178, 179n58, 192–94, 195n104, 198, 200–202, 209–14, 218–20, 224–25, 227
- confessor 17, 20–23, 34n55, 65, 67, 75n33, 97, 103, 112, 155n137, 164, 166, 168n21, 169, 180, 191, 200n115, 201–3, 206, 208–11, 224–25, 228–32
- conscience 17, 19–20, 22, 33–35, 37, 57–58, 82, 86, 161, 175, 178, 180, 191, 198, 208–9, 230, 232–33
- consensus (community) 13, 14n7, 26, 31, 38, 62, 135, 158
- contamination: see also pollution 64n3, 66, 70, 72, 76, 79–80, 85, 89–90, 92–93, 96, 188, 208, 223n38
- contraries (as means of cure) 98, 226, 228
- contrite heart, contrition: see also remorse 41, 49–50, 101, 105, 107, 108n126, 111, 132, 157, 189, 204, 227, 229, 231–32, 234
- conviction (criminal) 44–45, 76, 127, 179n58, 212
- corpse: see also carrion 63, 69, 71–72, 74, 75n31, 77–79, 82, 84–85, 91, 102, 136, 152n121
- correction (moral, disciplinary) 88, 94, 101, 115, 118, 130, 135, 139–40, 146,

- 157, 168, 180, 192, 206–10, 213, 217, 220, 230, 232
- corruption, corruptable (spiritual or moral) 9, 20, 42–44, 62, 67, 74–76, 82, 85–87, 89, 94, 98, 141, 148, 153, 155n137, 159, 228
- cosmography 144–45
- cosmology 144
- council: see also conciliar forum 15, 24n29, 29–30, 40, 43, 84, 87–89, 114–16, 124, 126n39, 128–29, 131n59, 133n66, 154, 156, 164, 170n27, 182–87, 191, 192n97, 195–98, 200–203, 205, 207, 209–12, 215, 219–20, 225
- Council: of Aachen 219; of Ascheim 183–84; of Chalcedon 43, 126n39, 128n49, 164; of Chalon 196, 198, 200–201, 203, 205, 207, 209, 220; of Dingolfing 184–86; of Mainz 154, 195–98; of Meaux-Paris 84, 87–88, 89n73; of Neuching 184–85; “on the shores of the Danube” 191, 215; of Paris 207; of Rheims 210–11; of Toledo;—, fourth 88;—, sixth 43
- counsel 18–19, 30, 43, 49, 51, 56, 80, 103, 125, 134, 141, 165–66, 170, 199
- count (noble official) 68, 163–65, 167, 170, 173, 176, 196, 202, 208, 212
- court (imperial, papal, royal, judicial) 15, 16n13, 17–18, 27, 33, 37, 39, 43–45, 47, 56, 59, 95n89, 102n104, 103, 117, 123, 127–28, 135–39, 146, 154n132, 156–57, 159, 161, 174–75, 178, 180, 184, 187, 190–91, 194, 198–99, 201, 206, 208–10, 212, 214, 220, 230–33
- crime 16n14, 19, 22, 28–30, 32, 34–36, 38, 40, 46–48, 51–52, 57, 59–60, 64, 75–78, 80–81, 83, 89, 91, 97–100, 102–3, 107–8, 110, 121, 129, 151, 157–58, 166, 169–70, 173, 178–80, 194n103, 198, 202, 204, 207, 212, 219–21, 226, 230, 232
- criminals 207, 221
- Cross, crosses 58, 78, 91, 105–7, 114–15, 135, 148, 179n58, 189, 205, 224
- crucifix: see also Cross, crosses 78, 224
- crucifixion 85, 104, 106–7, 151, 213, 224
- crypts 149
- Crystal, “Lothar” or “Susannah” 52
- culpability 32–33, 36, 52, 57, 61, 64, 81–82, 97, 109–10, 172, 176, 178, 179n58, 190, 223n38
- culprit: see also accused 110, 175–76, 180, 190, 192, 208
- cupidity (vice): see also vices 179
- cure, curative: see also medical imagery 38, 51, 62, 98, 99n97, 109, 132–33, 144, 169, 198, 203, 207, 210, 228
- curse 91, 147–48
- cushions: see also pillows 205–06
- custom 58, 68, 173, 203–05
- damage 56, 60, 64, 76, 82–83, 96–97, 131, 180, 197, 208, 222
- damnation 92, 120, 146, 152, 192n97, 228
- danger (religious) 56–57, 61–62, 64–65, 73–76, 82, 85–87, 91, 94–97, 110–11, 131, 134, 136, 144, 149–50, 153–54, 171, 177, 202, 205, 207–8, 222–23, 226, 230
- De virtutibus et vitiis* (Alcuin) 167, 168n16, 177n53, 199, 202n121
- De cavendis vitiis et virtutibus exercendis* (Hincmar) 176n49
- De fictis virtutibus et veris vitiis discernendis* 197n110
- de vita contemplativa*: (Julianus Pomerius) 97, 181–82, 200
- deacon, deacons: see also clergy 81–83, 127, 132, 138, 166n14, 169n25, 219n27
- debate 12, 16, 23n29, 27, 49, 59, 72–73, 94n85, 100, 112, 136n72, 159, 166, 179–80, 194, 198, 203–4, 207, 209, 212, 216, 221, 225
- decrees, ecclesiastical: see also councils 84, 87–88, 110, 121, 125, 128n49, 130, 132, 155n137, 168, 185n73, 195n103, 208, 211
- decretal (papal letter) 43, 44n83, 56n107, 71, 104n113, 123n29, 143, 174n43, 175, 185n73, 197, 227n45
- defendant (the accused) 10, 29, 33, 43, 47, 51–52, 57, 59, 64, 78, 80, 100, 144, 175, 178, 180, 230, 232; presence of required 43, 45
- defense 17, 21, 32–33, 43–44, 52, 97, 103, 127, 169, 175, 189, 209
- degradation: see also abuse 85, 132, 147, 208, 228, 231
- demon, demons 86–87, 93, 96, 100, 147, 223

- deposition from office 124, 129, 183
 Desert Fathers and Mothers 162, 223
 Despair (vice): see also vices 179n58
 devil: see also demons, Antichrist 44,
 48, 50, 80, 85, 102–3, 153n129
 diaposon 226
 “dichotomy, Carolingian” 70, 157, 211
 dietary regulation 63, 65n4, 69, 71–74,
 75nn31 and 33, 89n72, 90, 94, 204–5,
 223
 diocese, diocesan 77, 124, 126–27, 130,
 186, 192
 discipline, disciplinary 66, 88, 114,
 120, 130, 132–34, 154, 155n137, 156,
 159, 169–70, 183, 188, 196, 204,
 207–8, 212, 214, 216–17
 Discord (vice): see also vices 177
 disorder (religious): see also medical
 imagery 61–62, 79, 169, 172, 208
 doctrine: see also belief 61, 83, 85–86,
 117, 137, 139, 141, 150, 154–55, 228,
 232–33
 Donatists 217
 dragon 196
 duke 118n15, 129, 132, 144, 183,
 185–86

 ecclesiology 130, 186
 eclipses 227
 education 11, 84, 110, 121, 133,
 139–41, 155–56, 158–59, 161–62,
 166–67, 169, 174, 176–77, 180–81,
 187, 190–91, 193, 200, 202, 208, 210,
 225, 228, 230–32
 emperor 82–83, 109, 121, 138n76, 146,
 189, 191, 195n104, 196, 215, 217–18,
 233
 empire 13, 30, 32, 60, 84, 93, 97, 101,
 102n102, 110–12, 138, 155, 158–59,
 164n9, 172, 177, 180–81, 190, 196–99,
 208, 215
 enclosure: see also imprisonment
 161–63, 222, 225, 228
 Enoch, Book of: (see also
 Apocrypha) 142, 145n100
 enquiry: see also interrogation 13, 16,
 27, 36, 166, 180, 210, 232
 envy (vice): see also vices 102, 171,
 177n53
 episcopacy, episcopate: see also
 bishops 11, 27, 111, 118, 134, 136,
 139, 146, 155, 159, 182, 193n100, 195
 eschatology: see also
 apocalypticism 139, 152–53

 Eucharist: see also bread, wine 22n26,
 94n85, 102, 214
 evidence 10, 12, 15n12, 16–17, 20–21,
 26, 65, 66n6, 71, 73, 89n73, 114, 119,
 120n19, 133–35, 139–42, 158, 173,
 184, 195, 198, 208, 215, 230
 excommunication 40n73, 98, 128, 193
 exegesis, exegetes: see also bible 65, 84,
 86–87, 90–92, 94–95, 104, 106, 110,
 135, 137, 148, 151, 154, 156, 158, 168,
 173n40, 193, 200, 216
 exile: see also punishment 121, 221
 expiation: see also purgation 69, 76,
 78, 99, 198
 extra-canonical traditions 145, 151–52,
 156, 233

 fables 115, 149
 failings, spiritual: see also sin, vices 94,
 98, 169, 232
 fairness 43–45, 59, 175, 214
 faith: see also belief 25, 43, 46, 52, 57,
 62, 85–86, 88, 105, 107, 132, 141, 146,
 148, 153, 196, 199, 204, 206n132, 208,
 215, 218, 228, 231, 233
 faithful (the) 49, 57, 91, 93, 172, 196, 202
 false priests 127
 falsehood, fraud, deceit 14, 19–21, 25,
 28, 31, 33–35, 41–44, 46–48, 50–52,
 56, 60, 62, 79, 85–86, 88, 93, 114, 116,
 127–30, 132, 134, 141, 146, 149, 151,
 155, 171, 174–75, 177, 179, 197, 217,
 230
 fasts, fasting 75n33, 87, 143, 146, 162,
 188–89, 191, 196–97, 215
 fear 19, 38, 58, 90, 127, 154, 181,
 189–93, 194n103, 196–98, 206,
 206n132, 208, 219, 225, 228, 231–32
 fish: see also animal, bird 72, 74
 flesh: see also body 50, 72–74, 77, 95,
 101, 107–8, 205, 210, 225
 flogging: see also punishment 132, 155,
 155n137, 213
 fornication 35, 131, 179n58
 forum: see also court, council 9, 26,
 30, 37–38, 43, 46, 49, 102–3, 110, 128,
 130, 136, 156n138, 157, 175, 212–13
 freed (status) 18, 79, 103, 172
 freedom 9, 31, 100, 158, 199n114, 221,
 233
 frontier 114, 159, 181, 191, 196, 199,
 214
 furnace, burning (boys in): see Daniel
 3:8–97 (Index Scripturarum)

- gibbet 148, 224
 gifts 88, 154, 202
 Gluttony (vice): see also vices 171, 177n53
 goatskins 117
 God 9, 19–20, 22–25, 27–33, 37, 43, 47–52, 56, 58–59, 61, 78–79, 81, 86, 88, 91–92, 98, 101–9, 116, 126–28, 130, 132, 147, 151, 154, 157, 163, 169, 171, 173, 180, 187n78, 188–90, 192–93, 194n103, 196–97, 201–2, 204–6, 207n132, 211, 215, 217, 220, 222–23, 226–34
 gossip 21, 36
 government 9, 111, 129–30, 183, 186, 189, 195
 governor(s) 97, 110, 165n13, 183–84, 196, 229n54
 grace 28, 46–47, 51, 80–81, 100, 102, 104, 107, 197, 205, 223, 229
 Gratian (Decretum) 10, 66, 165n9, 195n104
 Greed (vice): see also vices 171
 Gregorian influence or ideology 98n91, 100n100, 109, 132, 175, 182–83, 200, 206, 219
 guidance 38, 70, 112, 167, 192, 208, 210
 guilt 33, 35, 39, 42–43, 47–48, 52, 64, 75–76, 78–82, 95–97, 99, 101, 110, 128–29, 170, 173, 175, 179n58, 180, 188, 190, 198, 201–2, 207, 220–21, 223, 228, 232–33
 hagiography, hagiographer 85, 120, 142n89, 145, 161, 223–24
 hair 81, 116, 132
 hanging, hanged man: see also punishment 91–92, 106, 147–48
 hangmen 39
 Hardheartedness (vice): see also vices 179
 hatred (vice): see also vices 171, 203, 227, 231
 health (spiritual): see also medical imagery 61–62, 101, 196, 225n41
 heart 18, 23, 50, 102, 106–8, 111, 132, 188, 211; contrite 50, 101, 111, 204, 227, 229, 234; hardened, obdurate 48–50; secrets of 20, 49–52, 116, 233
 Hebrew Scripture 93, 147n110, 151–52
 hemioleos 226
 heresy, heretic 83, 86, 93, 114–15, 129, 135–37, 139–41, 145n100, 148, 154–57, 176n51, 177, 208, 215, 217–18, 221
 hidden things: see also secrets 14, 24, 26, 28, 31, 48–50, 52, 56, 79, 103, 105, 141, 149, 163, 211, 223n38, 227
 hierarchy (institutional) 117, 118n15, 135, 159, 186, 201, 209
 homicide 166, 179n58
 honey 74
 hope 34, 38, 107–8, 179n58, 223, 229, 231–34
 horsemeat: see also dietary regulation;—, see also animal 72
 humility 81, 131, 162, 174–75, 188–89, 196, 225, 229, 231; abasement 159, 231
 Hunger (vice): see also vices 177
 iconography 52
 ideology (penitential): see also penitentialism 180, 182–83, 196, 198, 200
 idolatry 147, 166
 impartiality 202–3
 imprisonment 14, 132, 149, 155n137, 213, 221, 224, 228–29, 231, 233
 impurity: see also pollution 71, 79
 incest 13–14, 36, 43n80, 61, 64n3, 214
 individual (the) 9–10, 12, 37, 59–61, 68, 71, 76, 96, 100–101, 112, 139, 156–58, 162, 178, 180, 188, 197–98, 202–3, 208, 221–23, 232–33
 infanticide 80
 injury, injurious: see also danger 57, 76, 83, 96, 144, 179–80, 184, 208, 226, 233
 injustice 37, 219
 innocence 13–14, 32–33, 35, 42–43, 48, 52, 56, 64, 70, 75, 81, 97, 133, 162, 179, 184, 232–33
 innovation 44, 87, 89n72, 135, 148, 156, 158–59, 187, 198, 210
 inquisitor 180
 inspector 104–5
 insurgency 191, 199, 215
 intercession 103, 134, 231
 interior 29, 37, 100, 110, 141, 157, 163, 172, 175, 180, 201, 216, 233
 interrogation: see also investigation 30, 159, 176, 200, 202, 210–11, 230
 intimidation 13, 14n7, 20
 investigation 27–30, 37, 49, 51, 144, 214
 involuntary condition 76, 100

- involuntary penance 132, 134, 157
 Israel, Israelites 117, 134, 216, 218

 Jew, Jews 83, 86–96, 100, 112, 136–38, 146–53, 155, 216–17, 224
 Jewish, Judaic 83–84, 87, 89nn72–73, 90–91, 137, 147–54, 216n22
 judaising 137, 154
 Judaism 86, 136–37, 148, 153, 216–17
 judge, judges 22, 28, 37–38, 40, 43, 45, 49, 64, 101, 103, 105, 109–10, 175–76, 180, 184, 190, 202–3, 212, 214, 219–20, 231–33
 judgement 13–14, 26–27, 30, 32–33, 37–40, 42–43, 45–47, 49, 51–52, 56, 59, 67, 85, 87, 90, 101–4, 125–26, 133, 144, 151, 155, 159, 175, 180, 192, 201–4, 209, 211–13, 218–19, 224, 231–32
 jurisdiction 30, 41, 68, 110, 117, 125–26, 128, 130, 133, 136, 157–58, 165, 172, 175, 185, 196, 201, 208–9, 211–14
 jurisprudence 11, 59, 61–62, 64, 84, 95–96, 110, 122, 135, 156, 158–59, 180, 183, 187, 195n104, 207, 223
 jurist, jurists 10–11, 15, 33, 36, 44, 56, 57n113, 58–59, 62, 65, 68n11, 69–70, 73, 75, 77, 83, 95, 100, 104, 110, 112, 158, 204, 211, 214, 219, 225
 justice 28, 38, 42–46, 50–52, 56, 59, 64, 68, 81–82, 97, 101–2, 110–11, 132, 150, 162–63, 178, 184, 197, 201–3, 210, 212, 219, 221–22, 227, 234

 keys, power of 116, 143, 166n14, 184, 218–19
 king, kings: see also authority, royal 13–14, 17–18, 27–31, 36–39, 41–42, 48, 68, 82, 125, 129, 152n123, 197, 212–13, 217
 kingdom, kingdoms 15, 16n13, 30, 87–88, 108, 112, 114, 143, 150, 166n14, 183, 189

 laity 30–31, 38–40, 46n88, 59, 78, 88, 113, 117, 127, 133n67, 139, 141, 155, 159, 161–62, 165–67, 169n25, 174, 177–78, 180, 188, 191, 201–2, 207–9, 212, 221
 land 91–92, 148, 213, 218
 language 18, 20, 22n24, 31, 36, 49, 59, 62, 74, 89, 95, 97–98, 101, 175, 184, 197, 202, 207, 210, 227, 231–32

 learned law 64, 70–71, 73, 195
 learned, the 100, 122, 135, 140, 156, 176, 188, 190
 legislation 18n18, 41, 62, 67, 83, 87–89, 93, 95–96, 109, 112, 136–37, 156, 180–81, 183, 186, 195n104, 197, 210, 212
 legislator(s) 69, 109, 207
 leniency 205, 207
 lepers 149
 “Letter from Heaven” 142–44, 146
 Leviticus, Book of 69–71, 73n26, 74–75, 93–94
 lèse-majesté 226
Libellus de conflictu vitiorum et virtutum (Autpertus) 167, 178–79, 186
 lintel 193
 liquid 63, 77
 litanies 87, 142, 145
 literacy 62, 110, 140–41, 156, 167
 litigant, litigation 13, 15, 56, 203
 liturgy 22n26, 47, 50, 52n106, 62, 142, 145, 157, 168
 loose and bind, power to 81, 116, 150, 167, 184, 219
 lust (vice): see also vices 44, 171, 177n53, 228, 231
 Luxury (vice): see also vices 171, 207

 madness 33
 magic 48, 144
 Magog: see Ezechiel 38:2, 39:6 (Index Scripturarum)
 malfeasance 20–21, 100, 120, 127, 172, 177
 manna 147
 manuscript evidence 63, 71, 83n51, 99n97, 120, 144, 145n101, 61, 167n16, 168, 169n25, 173n40, 176n50, 177n55, 178n56, 181n62, 184, 190, 193nn99–100, 194, 195n103, 198, 200n116
 marriage 10, 12–14, 18n18, 22, 38–40, 59–60, 79, 121, 214
 martyr(s) 85, 105, 107, 119n17, 138, 155n137
 Meanness (vice): see also vices 177
 measure of penance 204–5, 207, 222
 meat 133–34, 157, 189, 192, 204–5, 207, 214, 222, 233
 medical imagery:—, abscess 99; contagion:—, see also pollution 67, 70, 89–91, 221; cures, spiritual;—, cauterisation 98, 203; disease 33,

- 89; healing 22, 29, 36, 48, 50,
56, 97–98, 102, 109, 144, 173n40,
178, 201, 213; illness 83, 109–10;
infection;—, see also contagion 83;
infection 101, 154; physician
97–98, 109, 201–3, 210; treatment
50, 98–99; wound(s) 28–29, 37, 57,
64, 97–98, 109–10, 149–51, 207
medicine 18, 38, 46, 50–51, 97–99,
101, 109–10, 144, 149–50, 169, 202–3,
210, 213, 228
memoriae 91, 164n8
menstruation 108
mercy 28, 33, 35, 48, 78–79, 103, 108,
163, 179, 193, 224, 229, 231
Messiah 151–52, 154–55
Messiahs 93, 149, 152
messianism: see also
apocalypticism 153
metaphor: see also allegory and
analogy 83–84, 94–95, 98, 226
metropolitan, metropolitanate: see also
bishop 30, 126–27, 129–30, 135, 196
miasma, miasmatic: see also
contagion 79
military activity 97, 179, 191, 197–99,
214–15, 223
millenarianism: see also
apocalypticism 153
minister, ministry 9, 18–19, 21, 25–26,
29, 36, 38, 40n73, 81, 88n70, 93, 98,
125, 130–33, 141, 144, 155, 157, 166,
169, 175, 182, 188, 191–92, 201–2,
207–9, 219n27, 220, 224, 232
mission, missionary 113, 118–20, 122,
161n2, 214n16
mold 74
monarch, monarchy: see also king 28,
67
monastic environment 12n5, 25, 29,
60, 64n3, 65, 78, 88, 112–13, 132,
129, 141, 161n2, 181–2, 186, 187n79,
199n114, 201, 220–22, 231; personnel;—,
abbess 77–80, 133, 141, 183,
228;—abbot 28–29, 130, 141,
159, 178, 183, 186–87, 196, 221;—,
canoness 224;—, monk(s) 81, 112,
120, 127, 129, 132–33, 146, 155n137,
164, 167, 173–74, 178, 182–83,
186n75, 196, 202n122, 213, 221, 229,
231;—, nuns 77–80, 96, 120,
132–33, 145, 155n137, 162, 167,
183, 224; place;—, abbey 178;—,
cell 224–25, 228n47, 229;—,
cloister 164;—, convent 16n14, 25,
29, 79
mortification 11, 112, 204–5, 210, 225
motive (intent) 59, 64, 100, 166, 178,
180
mouse, mice: see also animal 63,
65–66, 69–70, 72, 74, 76, 223n38
murder 33, 72, 77, 129–30, 134, 212,
221
music 226, 228–29
mysteries 12, 14, 96, 139, 220, 233
narrative(s) 11n3, 19n19, 21, 30,
66–67, 81, 102, 162, 170, 205, 207,
223, 231
negligence 90, 204, 218
nobility 14, 25, 28, 30–31, 39, 114, 118,
119n17, 133, 140–41, 161–62, 182,
185, 196, 222
norm(s) 9, 12, 63, 68, 123–24, 148,
158, 165, 208, 223
notaries, notarial acts 29, 33, 185, 196
oath(s) 20n20, 22, 23n28, 43n79,
47n92, 48, 50, 52, 56–57, 79n42, 80,
116n11, 130, 133
Obduratio (vice): see also vices 179
obedience 124, 134, 188–89, 195,
197–98, 220, 224–25
obligation(s) 9–10, 18, 23, 24n29, 33,
37, 78, 162, 178, 183, 189, 209, 217,
222, 229
offense(s) 24, 64, 70, 95–96, 131, 178,
211–12, 221, 230
opinion(s), juridical 10–11, 15, 18,
26–27, 45, 56, 95, 109, 121–23, 146,
157, 166n14, 176, 198, 204, 211, 213,
221
oppression 97, 140, 159, 183–84,
185n72, 197, 208, 212
oral declarations 21, 26n35, 34n54,
59, 62
ordeal 13–14, 32, 38, 43, 46–50, 52, 56,
68, 78n38, 79–81, 103, 144
orthodoxy 57, 83, 141, 142n90, 146,
155
otherworlds 144
pallia 123, 124n31
Palm Sunday 147
papacy, papal court, Apostolic See 115,
124–26, 129–30
Paradise 102, 104–7, 132n63, 157,
179n58, 192n97, 224

- parish 65n6, 114, 154, 192, 208, 214, 218
- pastoral ministry 11, 17–18, 22, 25–26, 51, 65, 70, 98, 100, 102n104, 109–12, 114, 117, 120, 131n58, 133–36, 139, 156–59, 168, 175, 180, 187, 191–93, 197–98, 201, 206, 211, 214, 218–19
- patristic texts, authorities 51, 83, 93, 116n11, 137, 139, 156, 181, 193n100, 219, 232
- penalty, penalties 101, 132n65, 133, 212, 215, 220
- penitential rites: collective 97, 188–89, 197
- penitentialism 112, 138–39, 174, 199, 208–9, 230, 233
- penitentialist(s) 175, 181, 209, 217
- penitentials 65–67, 69–74, 76–77, 96, 99, 101, 105n115, 106, 120, 122, 166, 168, 177n55, 190, 194–95, 200, 205–6
- penitent(s) 17, 23n29, 25, 27, 29, 32, 41, 57, 102, 131, 161, 163, 166, 170, 177, 179n58, 180, 190, 192–93, 195, 200–202, 204, 206, 211, 219n27, 220–25, 229–30, 232–33
- perjury 56, 221
- permission 9, 23n29, 24–25, 27–28, 31, 36, 64, 72n23, 73, 74n28, 75nn31 and 33, 125, 153n126, 163, 165, 166n14, 169n25, 178, 180, 192, 212, 219n27, 224
- persecution 52, 64, 87n67, 107, 217, 233
- Petrine commission: see keys, power of, and loosing and binding 116, 218–19
- piety 17, 22, 47–48, 75n33, 81, 108, 111–12, 134–35, 155–56, 159, 162–63, 165, 208
- pilgrimage 119n17, 205
- pillows: see also cushions 205, 207
- placita: see also court 212
- plaintiff 64, 115
- plea, pleading 19, 29–31, 33, 136, 158
- pollution 35–36, 40, 60–64, 65n4, 69–71, 73–85, 87, 89–100, 108, 110, 136, 148, 169, 216, 228; collective 94
- poor (the) 77, 149, 179, 183–84, 185n72, 189, 197, 202n122, 212, 218
- power: balance of 170, 178, 185–86, 191, 233; of Christ 172; clerical 38, 40, 164, 214, 218; to coerce 214, 217–19, 233; of confessor(s) 208–09, 228; of the devil 50, 103; divine, celestial 117, 144, 157, 220; ecclesiastical 123, 135, 187; episcopal 184; of the elite 140, 201; imperial 110; judicial 43, 158, 218; of the keys 116, 184, 219; legal 219; local 172; of nobility 118, 183; of penitent 190, 232–33; religious 21, 159; royal 27, 37, 135; secular 158, 182–83
- prayer, prayers 22n25, 28, 50, 79–80, 87, 103, 115, 143, 145–46, 154, 166, 169, 172, 183, 189, 222, 229
- preaching, preachers 62, 120, 135, 139, 141–42, 154–56, 159, 182, 193, 206n132, 214
- precedent 40, 45, 59, 62, 64n3, 75, 83, 89, 121–22, 134, 136, 185, 204, 216–17
- predestination 100
- prescription(s) 44, 65n4, 69, 71, 74, 76, 84, 94, 98, 99n95, 123, 125, 183, 191, 197–98, 200, 224
- pride (vice): see also vices 102, 108, 171, 177n53, 192, 217, 219, 231
- priest(s), priesthood 12, 24n29, 34, 41, 47, 51, 57–58, 62, 65, 71n20, 79, 88, 102, 104, 114–15, 117, 121, 123, 127–35, 141, 143, 155, 165, 166n14, 169n25, 170, 173–75, 178, 180, 182–84, 185nn72 and 73, 186, 191–93, 195, 200n116, 201–4, 207–15, 218, 219n27, 220–21, 224, 229–30
- prisoner(s) 109, 229n54, 233
- privacy 9–10, 12, 26, 51, 208
- privacy of the soul 37, 59
- private action 9, 60, 222
- private and public 9, 11–12, 36, 60–61, 67, 70, 112
- private conclave 28, 31
- private confession 11–12, 34, 112
- private contracts 10
- private law 10, 66–68, 95, 97
- private penance 112, 205
- private penitent 41
- private space 10
- procedure: for confession 17, 25, 27, 29, 40, 59, 178, 202, 209; legal 10, 15, 16n13, 23, 26, 39–41, 43–44, 46–47, 51–52, 56–59, 80, 96, 125, 159, 174–75, 178, 192, 209; penitential, religious 198, 200–201, 205; for prosecution 43
- process: judicial, legal 10, 14, 16, 21–22, 26, 30, 36–38, 40, 47, 49,

- 99, 110, 158, 184, 201, 212, 232;
 penitential, religious 11, 157, 192,
 201–2, 211, 214, 220–21, 223
 profane(d) 79, 86, 91, 93–94
 proof: legal 33, 40; scriptural 56, 87,
 174
 prophecies 87n67, 93, 150–51, 154
 prophetess 139, 154
 prophets, false 86, 93, 154–55, 197, 217
 prosecution(s) 10, 12, 22, 32–33,
 43–44, 46, 60, 64, 82–83, 96, 110–12,
 115, 129, 133, 135–36, 139, 156–58,
 175, 178, 186, 209, 223, 225,
 230
 protection: for the accused 33,
 76, 133; against doctrinal
 difference 83, 93, 111, 141, 157;
 against forced baptism 215;
 divine 80; of empire 97; of the
 individual 61, 159; of Jews 136;
 of property 183; of the public 61,
 63, 76, 83; purgation as 81; secrecy
 as 56, 59; of secrets 51; of the
 soul 182; by talisman 143; for
 voluntary confessant 213; of the
 vulnerable 140, 183, 197, 208
 psalter 78
 Pseudo-Isidorian Decretals 43, 44n81,
 174n39, 175, 185n73, 197
 Psychomachia 176–78
 public assembly 17, 30, 36
 public confession 26, 34, 36, 112, 120
 public court 45, 47
 public crime 36, 81, 212, 230
 public grief 42
 public judgement 56–57, 60
 public penance 25, 31, 36–37, 39–41,
 45, 49, 60–61, 70, 79, 81–82, 99, 112,
 138, 157, 211–12
 public welfare 37, 60–61, 76, 82–83,
 115, 146, 230
 punishment, punitive 11, 19, 33, 36,
 38–39, 40n73, 52, 59–60, 81–82, 91,
 101–3, 106–7, 109–10, 121, 130,
 132–34, 151, 157–58, 188, 191–92,
 204, 210, 214, 220–23, 227–28, 232
 purgation 35n59, 36, 47, 60–64, 76–82,
 96–99, 106, 109–10, 112, 133–34, 159,
 172, 201–2, 204–5, 221
 purification 72, 74, 78, 81, 94, 97, 99,
 182, 207
 purity 18, 65n4, 66, 69, 74, 80–82, 223
 quarantine 83, 208
 rape 29, 60, 221
 rebellions 197
 redemption: see also salvation 12, 31,
 75n33, 97, 102–6, 109–10, 132,
 149–50, 155, 158, 178, 179n58, 190,
 202, 207, 222–23, 225, 232, 234
 regional context 118–19, 135,
 138–39, 158–59, 170, 177, 182–83,
 186, 187n78, 191, 193n99, 194, 196,
 199n112
regula: sub regula monachica 132
Regula canonicorum (Chrodegang)
 181
regula iuris 157, 184
 regulation: episcopal 139, 233;
 formulation of 95; penitential 131,
 144, 191, 201, 210, 222; sacral 69,
 74; written 63
 relics 116
 remedy: see also medical imagery 18,
 27–28, 30, 60–61, 63, 70, 76–77,
 80, 83, 87, 96–97, 110, 112, 163,
 180, 188, 211, 229; see also medical
 imagery 58–59, 61, 64–65, 70, 76,
 96–97, 98n94, 99n97, 109, 156, 222
 remorse: see also contrite heart,
 contrition 28, 134, 222–23, 232
 reputation 51, 56, 81, 131, 162
 resolution of conflict: devices for 56,
 64, 68; penitential 32, 232;
 public 36, 51, 57; synodal 114, 130
 retribution 157, 176, 192, 220, 222
 revelation of secrets 49, 51, 105
 revelation of sin 51, 97, 131
 rhetoric 22, 48, 62, 67, 74n29, 85, 88,
 90, 97–98, 101–2, 109–10, 118, 124,
 133, 140, 173n40, 180, 196, 198, 207,
 210, 222
 rights 10, 110, 158–59, 183, 185n74,
 209, 211, 221–22
 rigour, rigourism 133–34, 155n137,
 200, 204–7, 209–10, 225, 231
 rites, rituals 11–12, 21, 37–38, 46–48,
 50, 52, 69, 76–77, 79–82, 96–97, 102,
 112, 157, 188–89, 196–98, 202, 210,
 215, 222–25
 “Roman” as designation of Franks 121
 “Roman” as Roman law 136–37
 Roman council 116, 140, 143
 Roman law 9–11, 32–33, 37, 39, 43,
 49, 59–60, 65–66, 75–76, 83, 89, 100,
 158, 174, 178, 198, 207, 214
 Romans 121, 224
 ruling (legal opinion) 39, 57

- rumour(s) 13, 28, 31, 79
 rustic(s), rusticity 140–41
- salvation: see also redemption 24–25, 28–29, 31, 34, 38, 92, 102, 105, 111, 132, 149, 155, 188, 192n97, 205, 208, 214, 218
- Satan: see also devil 86
- satisfaction 36, 51, 157, 219n27, 227
- Saxons 157, 161–62, 191, 224, 233
- scandal 96–97, 102, 131, 226n45, 230
- Scriptural citation: see also exegesis 24, 32, 39, 44–45, 52, 56–57, 91, 93, 96, 151–52, 171–73, 175, 179, 185, 199, 205–6, 211, 215–16, 232
- seal (of confession) 18, 20, 23, 24n29
- seclusion (penitential) 162, 170, 222
- secret and hidden things 64, 68, 73, 95
- secrets (and secrecy): see also hidden things 10–12, 14, 17–18, 20–21, 23n29, 27–28n38, 31, 36–37, 39, 45, 49–51, 56–59, 61, 70, 79–81, 104, 112, 116–17, 147, 154, 157, 163, 170, 211, 212n7, 227, 230, 233
- secular: authority 11; courts 37, 39, 136, 212, 220; interests 37, 127, 172, 189; jurisdiction 30, 38, 41, 136, 172, 185, 213; law 23, 26, 30, 159, 184–85, 194, 214; life 129; proceedings 26, 30, 39, 46, 133, 184, 221; punishment 223
- Sefer Zerubabel* 150
- segregation of Jews and Christians 83, 90, 96, 112, 137, 147, 216
- self-accusation 39, 101, 172–75, 178
- sentence (sentencing) 31, 37–41, 60, 96, 103, 106, 132, 184, 203, 211, 219, 221, 231
- sermon(s): see also preaching 139, 168, 171–72, 174n43, 176, 187–88, 191, 193, 198
- sex, sexual matters: see also pollution 33–34, 35n58, 40, 61–62, 64, 69, 78–80, 96–97, 223, 230
- shame: see also contrition, humility, remorse, and blushing 102, 173
- signs and wonders 81, 115, 141
- sinner(s) 20, 35, 67, 99n97, 102n104, 103–5, 110, 157, 162–64, 170, 173, 175, 180, 192, 207, 224, 230
- sins, sexual: abortion 14
- sin(s), sinfulness 21–22, 26, 29, 32–35, 38, 41, 48, 51, 56n107, 57–59, 70, 76–77, 80, 95n87, 97–103, 105–6, 108–9, 112, 116–17, 121–22, 131–32, 134, 149–50, 152, 155–58, 162–64, 166, 168–74, 176–78, 179n58, 181, 188, 190, 192–93, 194n103, 198, 200n116, 201–2, 204–5, 207–8, 211, 217, 219, 221, 223n38, 224–25, 228nn50 and 52, 229, 231–32
- slave(s), slavery 89n73, 90, 164, 189, 202n122, 213, 216–17
- solitary (hermit) 161–63, 165, 224
- soothsaying 154–55
- sorrow 28, 41–42, 170–71, 204, 228
- soul(s) 9–10, 14, 22, 24–25, 28–29, 34, 37, 48, 56, 58, 82, 94, 98, 101, 111, 123n28, 131, 133, 139, 157, 163–64, 169, 171–72, 176–78, 180, 182, 184, 189, 193, 196–97, 201–3, 205, 206n132, 208, 221–22, 226, 228n50, 231–33
- soup 63, 65, 72, 76
- spell(s) 14, 144
- spider 82
- standards: community 68, 95; religious 230, 233; written 203
- status: ecclesiastical 118, 120, 126, 135; legal 30, 80, 178; moral 231; religious 25, 163, 165, 231–32; social 81, 140, 201–2, 220
- statutes, statutory law 64, 76, 83, 90, 95, 110, 136, 178, 185n74
- stoning 47, 147–48
- stories: see also heresy 146–48, 225
- strangled things: see also corpse 72
- submission: see also obedience 159, 161–62, 175, 178, 190–91, 197, 220, 222, 224–25, 227, 232
- suffering 51, 97, 105–7, 109–10, 127, 132, 150, 157, 188, 201, 204–5, 210, 217, 222–25, 226n44, 229, 232, 234
- summons 30, 45
- superstition(s): see also heresy 89, 140, 142
- synagogue 86, 139
- synod(s): see also council 15n12, 30, 40, 46n88, 70, 89, 114, 124, 128–30, 132, 140, 143, 155, 165, 168, 181, 183–85, 188, 192, 194, 195n104
- taboo(s): see also pollution 73, 94, 110
- Talmud 149–50
- Talmud, Babylonian 149
- tears 18, 28, 31, 37, 41–42, 80–81, 85, 87, 97, 101, 108–9, 133, 150, 163, 179n58

- theft 48, 179, 221
 Theodosian Code 89
 therapeutic model 110, 169, 172, 180, 207–8
 thief on the cross: see Luke 23:39–43 (Index Scripturarum)
 thieves 107
 thoughts: as objects of scrutiny 50, 61–62, 64, 96–97, 108, 211, 232–33
timor dei: see also fear 190, 193n100, 229n55, 231
 tithing 183, 185n73, 191
 Toledot Iesu 147–48
 tomb(s) 34n55, 91, 143, 148
 traditions: popular religious;—, see also belief 136, 139–40, 142–44, 146–49, 151–52, 155
 training (juridical, textual, clerical) 62, 65, 71–73, 80, 91n80, 93–94, 110–11, 122, 141, 155, 192, 194, 200, 202
 transgression 76, 79, 81, 100–101, 140, 163, 178, 188, 207, 211, 222, 230
 tribunal 35, 43, 80n46, 101–2, 175
 truth 9, 13–15, 19, 22–23, 24n30, 26–27, 33, 35, 43–44, 46–52, 56, 59, 91, 137, 175, 180
 uncleanness: see also pollution 63, 69–70, 72, 74, 86, 92, 96, 134
 verdict(s): see also sentence 9, 22, 31–33, 36–38, 45, 47, 60
 vice(s) 13, 29, 51, 62, 81, 94, 98, 159, 167–69, 171–72, 176–82, 197–98, 200–204, 211, 227, 231
 virtues 81, 107, 159, 167–69, 172, 176–79, 181n64, 182, 194n103, 197, 220
 Visio Baronti 145–46
 Visio Pauli 145
 vision(s) 162, 223, 229, 231, 233; eschatological 150
viva voce testimony 21, 26, 29, 33–34
 water 69, 74, 77–79, 108, 132; holy 63, 76–78; ordeal by;—, “bitter” 47; ordeal by 48–49
 welfare: public or community 61, 80, 82–83, 115, 128, 146, 183, 189, 215, 222
 widows 183, 185n72, 197
 witches, witchcraft 14, 29, 213
 witness(es) 13, 22–23, 32, 35, 40, 43–44, 52, 57, 133, 175, 180, 192, 209
 wizard 147
 woman, women 23, 24n30, 25, 29, 34n55, 35, 38–39, 45–47, 51, 74, 78, 80, 99, 103, 161, 170, 214, 216–17
 writ 39, 41, 57, 121
 written accusation 38
 written confession 30, 33, 36, 39–41, 45, 57–58
 written law 62–63, 68–69, 72, 84, 95–96, 114, 117, 136, 143, 198, 203
 written prescriptions 71, 76, 167

INDEX SCRIPTURARUM

Chapter and verse citations are to the modern Vulgate; the Carolingian texts often cite non-Vulgate versions. Please consult the *Index Rerum* and *Index Personarum* for references to general allusions to biblical figures, events, or traditions.

Genesis		Ezechiel	205–07,
21:1–21	216–17		218
Exodus		1:7	174n43
8:15	48	13:18	205–6
Leviticus		22:24	92, 93n83
11:29–35	69	34:4	206n131,
Numbers			218
5:11–31	47	36:26	50
Deuteronomy	69, 74, 216n21	38:2, 39:6	150–51
4:20	92	Daniel	
6:16	32, 56n108	3:8–97	48, 103
16:19	202	7:9–14	150, 152
21:22–23	91–92, 148	9:26–27	152
1 Kings		13:1–64	42, 44–50, 52,
16:1–7	51		79, 104
25:22–35	56	Amos	
Psalm(s)		5:23	87
34	25	Haggai	
50:19	204	2:13	216
106 [105]:38–39	92–3	Zachariah	
Proverbs		12:10–12	150–52, 216
18:17	172–75	Matthew	
22:28	4, 215	7:1	185
28:13	93	7:2	211
Ecclesiasticus/Sirach		8:8	22
4:31 (4:26)	173	14:9	37, 42
25:16	193	16:19	184–85, 218
	(see <i>timor dei</i> ,	18:15–17	193n97
	Index rerum)	24:30	152
		27:25	92
Isaiah		Mark	
1:15	92	8:35	24–25
22:25	85–86	13:14	88
53	149	Luke	
59:3	92	1:52	184
Jeremiah		6:37	185
1:14	87n67	10:16	197
22:29	92	11:24	86
		14.21–23	218

18:8	85–86	Galatians 4:21–31	
23:33–43	104	(cf. Gen. 21:1–21)	216
23:39–43	47n90, 104–8,	1 Tim. 4:4	171n30
	107n121 and	Hebrews 13:17	197
	122, 132n62,	James 5:20	164, 173n40,
	157, 179, 205		201
23:46	224	1 Peter 2:17–19	197
John	86–88, 137	1 John 2:18	88
8:3–11	47n91	Revelation	
10:16	215	1:5	152
Acts of the Apostles		1:7	152
5:35–36	154n134;	2:9, 3:9	86
15:29	241		
1 Corinthians			
4:5	211		

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